

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 271 OF 2018

(Arising out of SLP(Crl.) No.57 of 2013)

P. RAMADASAPPELLANT(S)
:Versus:
STATE OF KERALA AND ANOTHERRESPONDENT(S)

J U D G M E N T

A.M. Khanwilkar, J.

1. This appeal, by special leave, arises from order dated 10th February, 2012 passed by the High Court of Kerala at Ernakulam in Criminal Revision Petition No.3075/2011.
2. The appellant was convicted by the Judicial First Class Magistrate-II, Ottappalam, for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and was sentenced to undergo simple imprisonment for 3 months and to pay a compensation of Rs.2,45,000/- to the complainant

under Section 357(3) of the Code of Criminal Procedure, 1973, vide his order dated 30th March, 2010 passed in Summary Trial No.69/2008. In default of payment of compensation, the appellant was directed to undergo further simple imprisonment of 15 days.

3. Assailing the judgment of conviction and order of sentence passed by the Judicial First Class Magistrate-II, Ottappalam, the appellant filed an appeal before the Court of Additional Sessions Judge, Palakkad Division at Ottapalam, which came to be dismissed on 5th August, 2011. Feeling aggrieved, the appellant approached the High Court of Kerala at Ernakulam by way of criminal revision petition, being Criminal Revision Petition No.3075/2011. The High Court confirmed the order of conviction and sentence passed by the Trial Court and as confirmed by the lower Appellate Court whilst dismissing the criminal revision petition on 10th February, 2012. Aggrieved by the said order passed by the High Court, the appellant has approached this Court by way of special leave petition.

4. This Court issued notice to the respondents. Respondent No.1 is represented by Advocate Mr. G. Prakash, (AOR). No appearance has been entered on behalf of respondent No.2 (complainant). When the matter was taken up for hearing on 15th January, 2018, the Court was informed that the appellant has already deposited the compensation amount of Rs.2,45,000/- (Rupees two lac forty five thousand). However, considering the submissions made on behalf of the appellant, the Court passed the following order:

“Let the matter be listed on 12.2.2018 to enable the petitioner to deposit a further sum of Rs.1,00,000/- (Rupees one lac only) before the trial Court. After the deposit is made, the trial Court shall issue notice to the complainant for withdrawal of the amount.

If the proof of withdrawal is filed before this Court, this Court may consider for waiver of the sentence relating to imprisonment.”

5. Hearing of the case was accordingly deferred. The appellant has now produced a receipt dated 5th February, 2018 of having deposited sum of Rs.1 lac (Rupees one lac) in the Trial Court in terms of our order dated 15th January, 2018.

Office Report dated 8th February, 2018 indicates that respondent No.2 has been duly served. However, no appearance has been entered on behalf of respondent No.2 till date.

6. After considering the submissions and going through the record of the case, we are of the opinion that it is not possible to interfere with the concurrent finding of fact regarding the finding of guilt recorded against the appellant. Thus, no interference is warranted against the order of conviction. The only question that must receive our attention is about the sentence awarded to the appellant.

7. Having regard to the fact that the appellant has already deposited the compensation amount of Rs.2,45,000/- and also deposited further amount of Rs.1,00,000/- (Rupees one lac) as directed by this Court on 15th January, 2018, what remains to be complied with by the appellant in terms of the decision of the Trial Court, is to undergo simple imprisonment of 3 months.

8. Considering the fact that the appellant has complied with the direction given by this Court vide order dated 15th January, 2018 and taking overall view of the matter, we are of the opinion that interest of justice would be subserved if the order regarding simple imprisonment of three months is modified and in lieu thereof, additional compensation amount of Rs.1,00,000/- (Rupees One Lac only), already deposited by the appellant before the Trial Court, is directed to be made over to respondent No.2. In other words, respondent No.2 is free to withdraw the additional compensation amount of Rs.1,00,000/- (Rupees One Lac only) already deposited by the appellant before the Trial Court. This amount be paid to respondent No.2 subject to verification of his identity.

9. We are conscious of the fact that respondent No.2 (complainant) has not appeared before this Court, but the order which we propose to pass is to his advantage and, in all probability, the same would be acceptable to him. We make it clear that if respondent No.2 – original complainant is not

satisfied with this order, he will be free to apply for recall of the same, which request can be considered appropriately.

10. Accordingly, we partly allow this appeal in the aforementioned terms. Resultantly, the order of sentence passed by the Judicial First Class Magistrate-II, Ottappalam, dated 30th March, 2010, stands modified to the extent that the appellant shall pay an additional compensation amount of Rs.1,00,000/- (Rupees One Lac only) to respondent No.2 - original complainant (which is already deposited before the Trial Court), in lieu of simple imprisonment for three months' period. Ordered accordingly.

.....CJI.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(Dr. D.Y. Chandrachud)

New Delhi;
February 19, 2018.