

ITEM NO.105

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 2094-2095/2009

K.HRUDAYA KUMAR

Appellant(s)

VERSUS

M.VIJAY LAXMI &amp; ANR.

Respondent(s)

(with office report)

Date : 27/08/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR  
HON'BLE MR. JUSTICE KURIAN JOSEPHFor Appellant(s) Mr. M.B.S.Raju, Adv.  
Mr. V.Sudheer, Adv.  
Mr. Balaji Srinivasan, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

The appeals are disposed of in terms of the signed order.

(Shashi Sareen)  
AR-cum-PS(Veena Khera)  
Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEALS No. 2094-2095 OF 2009

K.HRUDAYA KUMAR ... Appellant(s)

Versus

M.VIJAY LAXMI AND ANR. ... Respondent(s)

O R D E R

The appellant was tried and convicted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo rigorous imprisonment for a period of six months besides a fine amount of Rs. 5,000/-. The conviction and sentence was affirmed by the First Appellate Court in appeal and by the High Court in revision. The present appeals assails the correctness of the said orders.

We have heard learned counsel for the appellant. No one has entered appearance on behalf of the respondent-complainant.

From a reading of the orders passed by the courts below it appears that as against an amount of Rs.1,00,000/- covered by the cheque the subject matter of the complaint filed by the complainant, the appellant

has pursuant to an order passed by the Consumer Disputes Redressal Forum paid a sum of Rs. 2,12,800/-. It is also evident from the order passed by the High Court that the appellant was in custody for a while though the exact period of incarceration is not very clear. That apart the appellant appears to have committed default in payment of the award amount passed by the Consumer Disputes Redressal Forum, pursuant where to he appears to have been sent to civil prison to be released only after he had paid the balance amount of Rs. 2,12,800/- mentioned above. This is evident from an order dated 03.12.2004 passed by the District Consumer Forum directing the Superintendent Central Prison, Chanchalguda, Hyderabad to release the appellant from the custody. Taking all these factors into consideration and keeping in view the fact that the cheque was issued as early as in the year 2000 and the entire transaction appears to have been looked into and finally determined in terms of the order passed by the Consumer Forum, we do not see any reason to commit the appellant to jail to undergo the remainder of the sentence awarded to him. In our opinion interest of justice would be sufficiently served if the jail sentence awarded to the appellant is substituted by a sentence of payment of fine of Rs. 50,000/- .

We accordingly modify the order passed by the courts below and direct that the sentence of six months' rigorous imprisonment and fine amount of Rs. 5,000/- awarded to the appellant should substituted by a fine of Rs. 50,000/- out of which a sum of Rs. 45,000/- shall be paid to the complainant towards compensation. The fine amount shall be deposited with the Trial Court who shall disburse to the complainant towards compensation the amount mentioned above. In the event of non-payment of fine within a period of four months, the sentence awarded to the appellant shall stand restored and the appellant taken into custody to undergo the remainder of the sentence.

The appeals are disposed of accordingly.

.....J.  
(T.S.THAKUR)

.....J.  
(KURIAN JOSEPH)

New Delhi,  
27<sup>th</sup> August, 2015.