

THE HON'BLE MRS JUSTICE ANIS
CRIMINAL REVISION CASE NO.343 of 2008

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 17.10.2005, passed by the I Additional Munsiff Magistrate, Tenali, in C.C.No.143 of 2002, as confirmed by the XI Additional District & Sessions Judge, Guntur in Crl.A.No.382/2005 dated 29.02.2008.

2. The revision petitioner is the accused and the 1st respondent herein is the de facto complainant in C.C.No.143 of 2002 before the trial Court. For the sake of convenience, the parties, hereinafter, will be referred to as they are arrayed in the C.C. before the trial Court

3. The brief facts of the case are that the de facto complainant-1st respondent filed a private complaint under Sections 138 and 142 of the Negotiable Instruments Act, (for short 'the Act') against the petitioner stating that on 24.11.1999 the accused borrowed an amount of Rs.2,00,000/- from the de facto complainant and executed a promissory note. Thereafter, the accused made some part payment Rs.10,000/- on 23.10.2000 and the same was endorsed on the back side of the promissory note. As the de facto complainant demanded further amount, the accused issued a cheque bearing No.790643 dated 14.11.2001 for Rs.2,00,000/- drawn on Vysya Bank Limited, Tenali in favour of the de facto complainant. When the cheque was presented on 30.11.2001, the same was dishonoured for want of sufficient funds. Then the de facto complainant got issued a legal notice on 7.12.2001. The accused received the same and got issued reply dated 24.12.2001. The de facto complainant also issued a rejoinder on 2.10.2001 but the accused did not pay the amount.

During the course of trial, on behalf of the de facto complainant

PWs.1 to 4 were examined and Exs.P.1 to P7 were marked. None was examined on behalf of the accused, but he was examined under Section 313 Cr.P.C and denied the incriminating evidence on record.

After considering the evidence on record, the trial Court found the accused guilty for the offence under Sections 138 and 142 of the Act and convicted him and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.3000/- in default to suffer simple imprisonment of one month.

Aggrieved by the judgment of the trial Court, the petitioner filed Criminal Appeal No.382 of 2005 on the file of the XI Additional District and Sessions Judge, (F.T.C) Guntur at Tenali, which was dismissed through order dated 29.02.2008 confirming the judgment of the trial Court. Against the dismissal of said appeal, the present revision case is filed to set aside the judgment of the appellate Court as confirmed by the trial Court.

The learned counsel for the petitioner argued that the complainant had already filed O.S.No.211 of 2003 and the same was dismissed on 4.01.2007 and therefore there is no legally enforceable debt for the present, and hence he prayed this Court to take a lenient view in favour of the accused and reduce the sentence.

Now the point for consideration is whether the petitioner is entitled to quash the proceedings in C.C.No.143 of 2002 as prayed for?

A perusal of the record shows that the de facto complainant gave a complaint against the petitioner under Section 138 and 142 of the Act on the ground that the petitioner-accused borrowed an amount of Rs.2,00,000/- on 24.11.1999 and executed a promissory note and thereafter he made some payments. On a further demand the accused issued a cheque dated 14.11.2001 for Rs.2,00,000/-, which was dishonoured on presentation on 5.12.2001 for want of sufficient funds. Thereafter notices were exchanged between the parties. The trial Court as well as the appellate Court gave a finding that there is legally

enforceable debt existing and in discharge of the said debt the accused issued a cheque-Ex.P.3 and the same was dishonoured as such the ingredients of Section 138 of the Act is proved.

The learned counsel for the petitioner contended that the suit filed by the de facto complainant in O.S.No.211 of 2003 was dismissed on 4.01.2007 and the petitioner could not file a copy of the said judgment before the trial Court. Therefore prayed the Court to take a lenient view regarding conviction.

Considering the evidence on record and after hearing both the sides, the judgment of the appellate Court as well as the trial Court are confirmed. However, the sentence of imprisonment imposed against the petitioner is reduced from one year simple imprisonment to three months simple imprisonment. The fine imposed by the trial court is unaltered.

Accordingly the Criminal Revision Case is disposed of. No costs. As a sequel, miscellaneous petitions, if any, shall stand closed.

JUSTICE ANIS.

17th March, 2015
Js.