

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Case No. Crl.R.C. No.1547 of 2015

Between:

Dasari Ratnakar S/o.Elia

... Petitioner/Appellant (s)

and

The State of A.P., Rep.by Public Prosecutor,
High Court at Hyderabad for the State of
Telangana and the Sate of Andhra Pradesh,
Hyderabad and another.

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: 31.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAJA ELANGO

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|---|---|--------|
| 1 | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1547 OF 2015

ORDER:

This Criminal Revision Case is filed challenging the Judgment,
dated 28.07.2015, passed in Crl.A. No.439 of 2014, by the II Additional

District & Sessions Judge, Guntur, whereby the learned Sessions Judge confirmed the conviction against the petitioner for the offence under Section 138 of the Negotiable Instruments Act (for short 'the Act') and modified the sentence imposed by the Special First Class Magistrate for Prohibition and Excise, Guntur.

The brief facts of the case are that the petitioner obtained a loan of Rs.2,00,000/- for his business purpose from the 2nd respondent Company under loan agreement dated 30.06.2010 agreeing to repay the same with interest at 25% per annum in equal monthly instalments. The petitioner issued post dated cheques towards part payment of the debt. Out of said cheques, the 2nd respondent had presented a cheque bearing No.014562, dated 15.11.2011, payable at IDBI Bank, Chadnramoulu Nagar, Guntur, for Rs.12,500/- towards monthly instalment. The same was dishonoured by the petitioner's bank and returned to the 2nd respondent with an endorsement "insufficient funds." Though the 2nd respondent got issued a legal notice to the petitioner demanding payment of the amount, the petitioner not pay the amount. Therefore, the 2nd respondent filed CC against the petitioner for the offence under Section 138 of the Act.

The case was taken on file by the trial Court and on appearance of the petitioner, he was furnished with the copies of the case documents as required under Section 207 Cr.P.C. When the petitioner was questioned about the offence, he denied the same and pleaded not guilty.

On behalf of the 2nd respondent, PW.1 was examined and Exs.P1 to P7 were marked. The petitioner examined himself as DW.1 and no documents were marked.

The trial Court, after hearing the arguments of both sides and

after considering the material available on record, found the petitioner guilty of the offence under Section 138 of the NI Act and convicted him for the said offence and sentenced him to undergo rigorous imprisonment for a period of three (3) months and also sentenced to pay a fine of Rs.12,500/- and in default of payment of fine amount, to undergo simple imprisonment for a period of fifteen (15) days. Aggrieved by the said judgment, the petitioner – accused preferred appeal before the II Additional District and Sessions Judge, Guntur. The learned Sessions Judge confirmed the conviction recorded by the trial Court against the petitioner, but, modified the sentence of imprisonment from three months rigorous imprisonment to one month simple imprisonment and confirmed the sentence of fine amount with default clause. Challenging the same, the present revision is filed by the petitioner.

Learned counsel for the petitioner submitted that the judgments of the Courts below are contrary to law and based on the presumptions and assumptions and without any concrete evidence on record and therefore, the same are liable to be set aside. He further submitted that the petitioner has no antecedents, that he is not an habitual offender, that he has already paid the cheque amount of Rs.12,500/- and hence, he prayed to allow the revision case.

The trial Court as well as the appellate Court convicted the petitioner for the offence under Section 138 of the NI Act. Considering the facts and circumstances of the case, this Court is not inclined to interfere with the concurrent findings of the Courts below. But, taking into consideration that the petitioner has already paid the cheque amount of Rs.12,500/- to the complainant, and also he suffered four days imprisonment, this Court is of the view that the sentence of imprisonment imposed by the learned Sessions Judge can be set aside.

In the result, the conviction imposed by the learned
II Additional District & Sessions Judge, Guntur, against the revision
petitioner-accused in Criminal Appeal No.439 of 2014 for the offence
under Section 138 of the Negotiable Instruments Act, is confirmed.
However, the sentence of one month simple imprisonment imposed by
the learned Additional District & Sessions Judge, Guntur, for the said
offence is hereby set aside while confirming the sentence of fine with
the default sentence. The petitioner-accused shall be released
forthwith, if he is not required in any other crime.

Accordingly, the Criminal Revision Case is partly allowed.
Consequently, the miscellaneous petitions pending, if any, shall stand
closed.

RAJA ELANGO, J

July 31, 2015.
KTL