

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1642 OF 2006

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 03.10.2006, in CrI.A.No.61 of 2005, on the file of the learned II Additional Sessions Judge, Guntur, whereunder and whereby the conviction for the offence punishable under Section 138 of the Negotiable Instruments Act (for short, "NI Act") was confirmed, but the sentence of Simple Imprisonment for a period of six (6) months and to pay a fine of Rs.2,000/-, in default of Simple Imprisonment for a period of three (3) months imposed against the 2nd petitioner/A-2 and sentence of fine of Rs.3,000/-, in default of Simple Imprisonment for three (3) months imposed against the 1st petitioner/A-1 in judgment, dated 10.01.2005, in C.C.No.110 of 2004, on the file of the learned Judicial First Class Magistrate for Excise, Guntur, was modified to that of Simple Imprisonment for a period of four (4) months and the rest of the findings of the lower Court were confirmed.

2. The brief facts, that are necessary for the disposal of the present Criminal Revision Case, may be stated as follows:

The complainant company is the formulators and dealers in pesticides. The accused approached the complainant and made to believe that their firm is a prospective and genuine firm and to despatch pesticides on credit basis and that an account was also opened by the accused. By 30.06.1999, the accused was indebted to a tune of Rs.14,88,769/-. When the complainant demanded, the accused have given a cheque for Rs.6,00,000/- drawn on Bank of Baroda, Nadendla Branch, on 30.06.1998 and when it was presented for collection in the complainant's Bank in Bank of Baroda, Guntur, the same was returned due to insufficient funds and a memo to that effect has been issued by the bank to the complainant with an endorsement "exceeds arrangement". On coming to know of the same, the complainant got issued a registered notice on 18.08.1998 calling upon the accused to

pay the cheque amount. Except A-5, all the accused received the same, but did not pay or give reply and A-5 managed to return the notice on coming to know about the contents through the remaining partners. The accused, being partners of A-1, are jointly and severally liable in discharge of the debt amount. Hence, the complaint.

3. In the trial Court, the case against the A-1 and A-2 was separated from C.C.No.304 of 2003 and numbered as C.C.No.110 of 2004. On appearance of the accused, they were examined under Section 251 Cr.P.C. and when the substance of accusation for an offence under Section 138 of the Negotiable Instruments Act was framed, read over and explained to the accused in Telugu, they pleaded not guilty and claimed to be tried.

4. To substantiate the charges, the prosecution examined P.W.1 and got marked Exs.P-1 to P-13.

5. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating evidence appearing against them in the evidence of P.W.1. They denied the same. On behalf of the accused, D.W.1 was examined and Exs.D-1 to D-5 were marked.

6. The trial Court, after considering the evidence on record, found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced as stated above. On appeal, the said conviction was confirmed, but the sentence was modified. Hence, the present Criminal Revision Case.

7. Now the point for determination is whether the judgments of both the Courts below are correct, legal and proper?

8. Heard the learned counsel for the petitioners and the learned Public Prosecutor for the respondent and perused the material available on record.

9. The powers of the High Court exercising jurisdiction under section 397 and 401 of the Code of Criminal Procedure are truncated. Unless the finding is shown to be perverse or incorrect or illegal or not

based on any evidence on record, then only the judgment under challenge needs interference.

10. The learned counsel for the petitioners argued for some time and confined his arguments in connection with the quantum of sentence.

11. Considering the facts and circumstances of the case and as the matter is pending for the year 2002, the conviction imposed by the trial Court and confirmed by the lower appellate Court is hereby confirmed. However, the sentence of imprisonment imposed on the 2nd petitioner/A-2 is hereby set aside. However, the fine amount of Rs.2,000/- imposed on the 2nd petitioner/A-2 and Rs.3,000/- imposed on the 1st petitioner/A-1 by the lower appellate Court are hereby enhanced to Rs.6,00,000/- (Rupees six lakhs only), which shall be paid to the complainant towards compensation. The petitioners/accused are directed to pay the fine amount imposed by this Court on or before 27.10.2016, failing which the 2nd petitioner/A-2 shall undergo Rigorous Imprisonment for a period of three (3) months.

11. Accordingly, the Criminal Revision Case is disposed of. Miscellaneous Petitions, if any, pending in this criminal revision case stands closed.

RAJA ELANGO, J

Date: 28th July, 2016

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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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