

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.631 OF 2007

ORDER:

The petitioner has preferred the present criminal revision case by invoking the provisions under Sections 397 and 401 of Code of Criminal Procedure (Cr.P.C.,) being aggrieved by the order, dated 26.04.2007, passed in Criminal Appeal No.120 of 2006 by the Court of the VII Additional Sessions Judge, East Godavari, Kakinada, whereby the learned District Judge dismissed the Criminal Appeal by confirming the order dated 15.05.2006, passed in C.C.No.276 of 1998 by the III Additional Judicial First Class Magistrate, Kakinada, whereby the learned Judge convicted A.1 and A.2 for the offence under Section 138 of the Negotiable Instruments Act and sentenced A.1 to pay a fine of Rs.2,500/- (Rupees two thousand and five hundred only) and sentenced A.2 to undergo rigorous imprisonment for a period of one year and also to pay a fine of Rs.2,500/- (Rupees two thousand and five hundred only), in default, to undergo simple imprisonment for a period of three months.

The complainant is the firm running business under the name and style of M/s.Rajasthan Iron Company and the first accused is the firm running business in Steel in the name and style of M/s.Sri Kanaka Mahalakshmi Steel Enterprises and represented by A.2 as proprietor. The accused used to purchase the steel material from the complainant on credit basis and used to pay some amounts now and then as part payments by way of cheques as well as cash. While so, an outstanding balance of Rs.11,68,738/- is due to be paid by the accused and on repeated demands made by the complainant, the accused issued the cheques to the complainant and that the same were dishonoured. Hence, the complaint.

Heard and perused the material available on record.

During the course of trial, P.Ws.1 to 3 were examined and Exs.P.1 to P.13 were marked on behalf of the prosecution. D.W.1 was examined and Exs.D.1 to D.6 were marked on behalf of the accused.

On appreciation of oral and documentary evidence, the trial Court found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act and accordingly sentenced the accused as stated above. Aggrieved over the same, the accused preferred an appeal and that the lower appellate Court dismissed the said appeal by confirming the conviction and sentence imposed on the accused by the trial Court. Aggrieved over the same, the present criminal revision petition is filed.

After evaluating and examining the material available on record, and considering the respective submissions of the learned counsel for both the parties, this Court is of the view that there are no special or adequate reasons warranting interference by this Court with the conviction imposed by the trial Court as confirmed by the lower appellate Court and the concurrent findings are based on appreciation of evidence in proper perspective.

At this stage, the learned counsel for the petitioners confined his argument only to the extent of sentence imposed on the accused by both the Courts below. He submits that A.2 has to look after his wife and children and he is the only breadwinner in his family and as such, lenient view may be taken by this Court.

Considering the submissions made by the learned counsel for the petitioners and the nature of offence, this Court is inclined to take a lenient view.

In the result, the conviction recorded by the trial Court, which is confirmed by the lower appellate Court, against the accused herein for the offence Section 138 of the Negotiable Instruments Act is hereby

confirmed. However, taking a lenient view, the sentence of imprisonment imposed on A.2 by the Courts below is hereby set aside. However, A.2 is directed to pay additional fine of Rs.25,000/- (Rupees twenty five thousand only) on or before 20.10.2016, in default of payment of additional fine, the petitioner shall undergo simple imprisonment for a period of three months.

The Criminal Revision Case is accordingly disposed of. Consequently, the miscellaneous petitions, if any pending in this revision case, shall stand closed.

JUSTICE RAJA ELANGO

09.08.2016
pln

