

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.193 of 2008

JUDGMENT:

1. This Criminal Revision Case is filed by the complainant challenging the judgment dated 16.11.2007 passed in C.C.No.120 of 2006 by the Judicial First Class Magistrate-cum-Principal Junior Civil Judge, Bhimavaram.

2. The complainant filed a private complaint before the learned Magistrate against the 2nd respondent-accused for the offence under Section 138 r/w 142 of the Negotiable Instruments Act. The same was taken cognizance by the learned Magistrate vide C.C.No.120 of 2006. It is alleged in the complaint that the accused borrowed an amount of Rs.2,75,000/- from the complainant on 18.9.2001 for investment and maintenance of prawn tanks agreeing to repay the said amount with interest at 30% per annum and executed a promissory note. Subsequently, on repeated demands, the accused issued a cheque for Rs.4,07,000/-. When the said cheque was presented, the same was dishonoured. The complainant issued notice to the accused, but he did not give any reply.

3. During the course of trial, P.Ws.1 and 2 were examined and Exs.P1 to P6 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

4. 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, convicted and sentenced him to pay a fine of Rs.10,000/- in default to suffer simple imprisonment for three months. It

was ordered that out of the fine amount, Rs.5,000/- shall be paid to the complainant towards expenses and compensation. Being not satisfied with the sentence imposed by the trial Court, the complainant filed this revision.

5. Learned Counsel for the petitioner submitted that the trial Court erred in simply imposing fine of Rs.10,000/- even though the accused was found guilty for the offence under Section 138 of the Negotiable Instruments Act and that the punishment imposed by the trial Court is inadequate and that the fine amount for the offence under Section 138 of the Negotiable Instruments Act be imposed in terms of the provisions of the Act.

6. From the material on record, it is apparent that after appreciation of the evidence on record, the trial Court found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him as stated supra. The petitioner-complainant filed this revision contending that the trial Court ought to have imposed punishment of imprisonment.

7. The trial Court imposed the sentence of fine on the following grounds.

“Admittedly, a civil suit was filed against the accused by the complainant. After taking illiteracy of the accused as the reason for non-response to the statutory notice got issued by the complainant, his age and burden towards his family and his status in the society and the plight of the farmers who are continuing cultivation as profession into consideration, I feel it is a fit case to take lenient view in passing the sentence against the accused”.

8. The reasons recorded by the trial Court for taking a lenient view are erroneous. Ignorance of law is not an excuse for taking any lenient view.

Therefore, this Court is of the view that this matter can be remanded to the Court concerned for appreciation of evidence afresh and pass appropriate orders.

9. Accordingly, the Criminal Revision Case is allowed. The judgment dated 16.11.2007 passed in C.C.No.120 of 2006 by the Judicial First Class Magistrate-cum-Principal Junior Civil Judge, Bhimavaram is set aside and the said C.C. is restored and remanded to the learned Magistrate for passing appropriate orders afresh after hearing both the parties. Consequently, miscellaneous petitions pending, if any, shall stand closed.

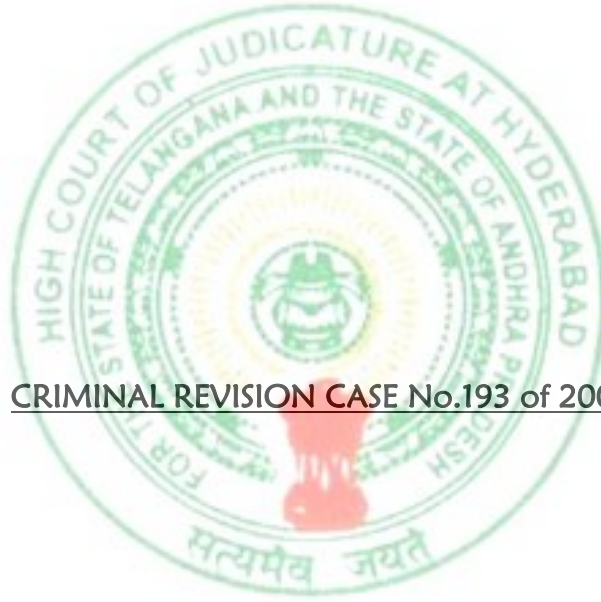
Dated:27th August, 2016

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JUSTICE RAJA ELANGO



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27.8.2016

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