

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.882 of 2006

ORDER:

The Criminal Revision Case is filed against the Judgment dated 15.05.2006 in Criminal Appeal No.97 of 2003 on the file of the IX Additional District & Sessions Judge (Fast Track Court), Krishna, Machilipatnam, by and under which the conviction and sentence imposed against the petitioner/accused by the learned Judicial Magistrate of First Class, Nandigama in CC.No.55/2001, dated 26.06.2003, was confirmed.

2. Heard the learned counsel appearing for the petitioner/accused and the learned counsel appearing for the 1st respondent/complainant.

3. The 1st respondent/*de facto* complainant filed the complaint alleging that the she is the proprietor of Sri Ayyappa Seeds at Nandigama and the accused firm also does the same business under the name and style of Hari Krishna Seeds Corporation at Tiruvuru. In the business transactions, the accused fell due and liable to pay a sum Rs.34,740/- and for which the accused issued Ex.P1 cheque bearing No.772783, dated 13.06.2000 drawn on Andhra Bank, Tiruvuru Branch. The 1st respondent/complainant presented the said cheque with his banker Andhra Bank, Nandigama Branch on 30.06.2000 for collection, but the same was returned on 07.07.2000 with an endorsement "insufficient of funds" in the account of the accused. On intimation, the accused requested time. Again the complainant presented the said cheque on 09.08.2000 and the same again was returned with the same endorsement on 14.08.2000. On 19.09.2000 the 1st respondent/complaint got issued Ex.P4 legal notice to the accused. The petitioner/accused received the said notice under Ex.P5

acknowledgment, but he neither gave any reply nor paid the cheque amount.

4. During the course of trial, the complainant examined himself as PW.1 and produced Exs.P1 to P7. The petitioner/accused denied the evidence on record. In defence, the petitioner/accused has not produced any evidence.

5. The petitioner/accused was tried for an offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') and by Judgment dated 26.06.2003, the learned Magistrate found the petitioner/accused guilty of the offence punishable under Section 138 of the Act and convicted and sentenced him to undergo simple imprisonment for 3 (three) months and to pay fine of Rs.5000/- (Rupees five thousand only) in default to suffer simple imprisonment for one month.

6. Against the said judgment, the petitioner/accused preferred the appeal and the learned appellate Court confirmed the findings of the trial Magistrate and dismissed the appeal. Aggrieved by the same, the petitioner/accused preferred the present revision.

7. The point for consideration is as to whether the Judgments of the Courts below is based on legally acceptable evidence or whether it needs interference?

Point:

8. A perusal of the record shows that there are transactions between the complainant and accused and they both are in the same business. Towards discharge of liability the petitioner/accused issued Ex.P1 cheque. The accused contended that the cheque was given towards collateral security but not for discharge of any enforceable debt. The petitioner/accused admitted that he signed the cheque. Though the petitioner/accused raised several contentions that there is no legally enforceable debt, he did not issue any cheque to PW 1 etc., but he did not give any reply to Ex.P4 notice raising all these

contentions.

9. Both the Courts below on appraisal of oral and documentary evidence found that the petitioner/accused himself had issued the cheque in question to the complainant, which was dishonoured. I do not find any infirmity warranting interference with the said findings. However, it is noticed that the petitioner/accused was sentenced to undergo simple imprisonment for a period of 3 months and to pay fine of Rs.5,000/-.

10. Considering the facts and circumstances of the case and since the transaction relates to the year 2000 and cheque amount is Rs.34,740/-, I feel that ends of justice would be met if the petitioner/accused is directed to pay compensation of Rs.50,000/- by setting aside the imprisonment of 3 months simple imprisonment.

11. In the result, the sentence of imprisonment of 3 months simple imprisonment imposed against the petitioner/accused by both the Courts below is set aside, subject to condition of the petitioner/accused deposits before the trial Court on or before 29.03.2016 a sum of Rs.50,000/- (Rupees fifty thousand only) towards compensation, failing which, the conviction and sentence recorded by both the courts below shall stand confirmed. It is needless to say that as and when the petitioner/accused deposits the said compensation amount, the 1st respondent/complainant is at liberty to withdraw the same without furnishing any security.

12. The Criminal Revision Case is accordingly disposed of.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 03.02.2016

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