

THE HON'BLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.2112 of 2004

ORDER:

The petitioner-Accused preferred the present Criminal Revision Case by invoking the provisions under Sections 397 and 401 of the Code of Criminal Procedure being aggrieved by the judgment, dated 12.05.2004, passed in CrI.A. No.25 of 2004 by the II Additional Sessions Judge, Guntur, whereby the learned Sessions Judge dismissed the appeal, confirming the Judgment, dated 12.11.2003, passed in CC No.138 of 2003 by the V Additional Munsif Magistrate, Guntur, whereby the learned Magistrate found the accused guilty of the offence under Section 138 of Negotiable Instruments Act and accordingly, convicted and sentenced him to undergo simple imprisonment for a period of two months and to pay a fine of Rs.500/- in default, to suffer simple imprisonment for a period of one month.

The case of the prosecution is that the accused borrowed an amount of Rs.65,000/- from the de facto complainant in the year 2002 and executed a promissory note in favour of the complainant. On repeated demands by the complainant, the accused issued a cheque for Rs.50,000/-. When the de facto complainant presented the cheque in his bank, the same was dishonoured due to insufficient funds. Thereafter, the complainant issued a notice to the accused. But the accused did not receive the same and hence, the de facto filed a complaint for the offence under Section 138 of NI Act.

The case was taken on file for the offence under Section 138 of NI Act. On appearance of accused, the charge under Section 138 of the NI Act was read over and explained to him, for which, he pleaded not guilty and claimed to be tried.

To substantiate its case, the prosecution examined PWs.1 to 3 and got marked Exs.P-1 to P-6 and Ex.X1. No oral or documentary evidence was adduced on behalf of the accused.

The trial Court, after considering the evidence on record, found the accused guilty of the above charge, and accordingly, convicted and sentenced him as stated above. Challenging the same, the accused preferred appeal in CrI.A. No.25 of 2004 before the II Additional Sessions Judge, Guntur, and the learned Sessions Judge dismissed the appeal by confirming the judgment of the trial Court, vide judgement impugned. Challenging the same the present revision is filed.

Heard and perused the material available on record.

On perusing the judgments of both the Courts below, this Court is of the view that since the findings of both the Courts below are concurrent in nature, this Court is not inclined to interfere with the factual aspects of the case.

When this Court pointed out that there are no merits in the revision, learned counsel for the petitioner-accused restricted his arguments to the quantum of sentence by submitting that the petitioner paid the entire cheque amount to the de facto complainant, and prayed that leniency may be shown while imposing sentence.

Considering the facts and circumstances of the case and also considering that the case pertains to the year 2003, the sentence of imprisonment imposed by the trial Court, as confirmed by the lower appellate Court, can be set aside by imposing additional fine amount on the petitioner.

In the result, the conviction recorded against the petitioner by the V Additional Munsif Magistrate, Guntur, in CC No.138 of 2003 vide judgment, dated 12.11.2003, as confirmed by the

II Additional Sessions Judge, Guntur, in CrI.A. No.25 of 2004, vide judgment, dated 12.05.2004, for the offence under Section 138 of the Negotiable Instruments Act, is confirmed. However, the sentence of imprisonment imposed by the trial Court against the petitioner for the above offence is set aside and the petitioner is sentenced to pay an additional fine of Rs.5,000/- on or before 24.08.2016.

Accordingly, the Criminal Revision Case is partly allowed. Miscellaneous applications, pending if any, shall stand closed.

RAJA ELANGO, J

July 25, 2016.

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