

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.974 of 2008

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 01.07.2008, passed in CrI.A. No.104 of 2008 by the IV Additional Sessions Judge, Hyderabad, whereby the learned Sessions Judge dismissed the appeal by confirming the Judgment, dated 08.04.2008, passed in CC No.1820 of 2003 by the IX Additional Chief Metropolitan Magistrate, Hyderabad, whereby the learned Magistrate found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act (for short 'NI Act') and accordingly, convicted and sentenced him to undergo simple imprisonment for a period of three (3) months and to pay a fine of Rs.3,000/- in default, to suffer simple imprisonment for a period of one month.

The case of the prosecution is that the petitioner –accused borrowed an amount of Rs.50,000/- from the de facto complainant for his business purpose and issued a post dated cheque. When the de facto complainant presented the said cheque in his bank, it was returned with an endorsement "Account closed". Immediately, the de facto complainant issued a legal notice to the petitioner and though the petitioner received the notice, he did not give any reply nor repaid the amount to the de facto complainant. Hence, the de facto complainant 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 PW.1 and got marked Exs.P-1 to P-5. On behalf of the accused, DW.1 was examined and Exs.D1 to D6 were marked.

The trial Court, after considering the evidence on record, found the petitioner guilty of the offence under Section 138 of the NI Act, and accordingly, convicted and sentenced him as stated above. Challenging the same, the petitioner preferred appeal in CrI.A. No.104 of 2008 before the IV Additional Metropolitan Sessions Judge, Hyderabad, and the learned Sessions Judge dismissed the appeal by confirming the judgment of the trial Court, vide judgement impugned. Against the said judgment, this 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 since the petitioner closed his business due to financial crisis and is now working as a Sales

person in a shop and he has to look after his family 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 IX Additional Chief Metropolitan Magistrate, Hyderabad, in CC No.1820 of 2003 vide judgment, dated 08.04.2008, as confirmed by the IV Additional Metropolitan Sessions Judge, Hyderabad, in CrI.A. No.104 of 2008, vide judgment, dated 01.06.2008, for the offence under Section 138 of the Negotiable Instruments Act, is confirmed. However, the sentence of imprisonment imposed by the trial Court for the above offence against the petitioner, as confirmed by the appellate Court, is set aside and the petitioner is sentenced to pay an additional fine of Rs.25,000/- on or before 30.10.2016 and the same shall be given to the de facto complainant as compensation.

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

RAJA ELANGO, J

September 21, 2016.
KTL