

THE HON'BLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.1092 of 2007

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 03.08.2007, passed in Crl.A. No.91 of 2007 by the VII Additional Sessions Judge, East Godavari District, Kakinada, whereby the learned Sessions Judge dismissed the appeal, confirming the Judgment, dated 28.03.2007, passed in CC No.480 of 2003 by the Additional Judicial Magistrate of First Class, Peddapuram, 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 years and to pay a fine of Rs.10,000/- in default, to suffer simple imprisonment for a period of one month.

The case of the prosecution is that the de facto complainant is the proprietor of a poultry form and the accused, who is doing business in eggs, purchased eggs from the complainant and issued a cheque for a sum of Rs.1,00,000/- towards the cost of eggs. When the de facto complainant deposited the cheque in his bank, the same was returned with an endorsement 'insufficient funds.' Thereafter, the complainant informed about the same to the accused and the accused promised to arrange for repayment, but he did not repay the same. 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-4. No oral or documentary evidence was adduced on behalf of the accused.

The trial Court, after considering the evidence on record, found the petitioner guilty of the above charge, and accordingly, convicted and sentenced him as stated above. Challenging the same, the petitioner preferred appeal in CrI.A. No.91 of 2007 before the VII Additional Sessions Judge, E.G. District, Kakinada, 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 petitioner is the only bread winner of his family and he has to look after his wife, children and also his old aged parents and due to financial strains, he could not able to pay the fine amount imposed by the trial Court also, 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 Additional Judicial Magistrate of First Class, Peddapuram, in CC No.480 of 2003 vide judgment, dated 28.03.2007, as confirmed by the VII Additional Sessions Judge, E.G. District, Kakinada, in Crl.A. No.91 of 2007, vide judgment, dated 03.08.2007, 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 is set aside and the petitioner is sentenced to pay an additional fine of Rs.20,000/- on or before 10.09.2016 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

July 25, 2016.
KTL