

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1438 of 2008

JUDGMENT:

1. This revision is filed by the accused against the Judgment dated 18.9.2008 passed in CrI.A.No.108 of 2002 by the II Additional Sessions Judge, West Godavari Division, Eluru.

2. The case of the complainant is as follows:

The accused borrowed a total amount of Rs.2,50,000/- on 2.4.1997 for the purpose of his family welfare and business development and executed five promissory notes, agreeing to repay the same with interest at the rate of 24% per annum and thereafter, the complainant demanded the accused for payment of the said amount. But the accused while admitting his liability, he postponed the same from time to time and subsequently, the accused gave post dated cheque on 5.8.1998 for Rs.2 lakhs drawn on Andhra Bank Branch, Gajuwaka, to the complainant towards part payment of the said pronotes debt. When the complainant presented the said cheque for collection, the same was dishonoured. The complainant issued a notice to the accused. But he did not give any reply. Hence, the complainant filed a complaint against the accused for the offence under Section 138 of the Negotiable Instruments Act.

3. The learned II Additional Judicial First Class Magistrate, Bhimavaram took the same on file as C.C.No.143 of 1999, examined the accused under Section 251 Cr.P.C., for the allegations made against him. The accused denied the allegations made in the complaint.

4. During the course of trial, P.Ws.1 to 3 were examined and Exs.P1 to P11 were marked on behalf of the complainant. D.W.1 was examined on behalf of the accused.

5. 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 undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of three months. Aggrieved by the same, the petitioner filed appeal in Crl.A.No.108 of 2002 before the II Additional Sessions Judge, Eluru. The said Criminal Appeal was dismissed. Hence, the petitioner-accused filed this revision.

6. Heard and perused the material available on record.

7. From the evidence on record, it is evident that the accused gave a cheque in question for the discharge of the debt, without having sufficient funds in his account. The evidence of P.Ws.1 to 3 and Exs.P1 to P11 clearly establishes that the accused borrowed the amounts covered under Exs.P7 to P11 promissory notes and gave the cheque in question in discharge of legally enforceable debt. The petitioner failed to disprove the case of the complainant. Both the Courts below gave concurrent findings in respect of the guilt of the accused for the offence under Section 138 of the Negotiable Instruments Act. In the circumstances, this Court is not inclined to interfere with the judgment under revision.

8. At this stage, the learned Counsel for the petitioner submitted that the petitioner has become insolvent and he filed Insolvency Petition and the same

is pending adjudication and that the petitioner is not in a position to pay such huge amount.

9. In view of the above submissions, this Court is inclined to take a lenient view.

10. In the result, the conviction recorded by the Courts below against the petitioner-accused for the offence under Section 138 of the Negotiable Instruments Act is confirmed. However, the sentence of imprisonment imposed by the Courts below for the said offence is set aside, while confirming the sentence of fine with default sentence. Further the petitioner-accused is directed to pay additional fine of Rs.1,00,000/-(Rupees One lakh only) on or before 25th December, 2016, in default, suffer rigorous imprisonment for a period of six months. On payment of the additional fine amount, the complainant is entitled to receive the same as compensation.

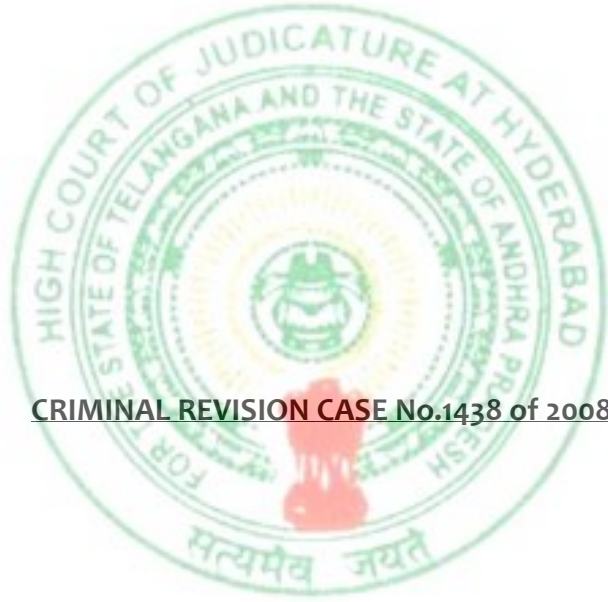
11. With the above modifications, the Criminal Revision Case is partly allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:23rd September, 2016

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23.9.2016

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