

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1784 of 2006

JUDGMENT:

1. This Criminal Revision Case is filed by the petitioner-accused against the Judgment dated 27.10.2006 passed in CrI.A.No.360 of 2005 by the I Additional Sessions Judge, Guntur.

2. Brief facts of the case are as follows:

On 16.2.2003, the accused borrowed a sum of Rs.60,000/- from the complainant for the purpose of his family expenses and executed a promissory note on the even date in favour of the complainant agreeing to repay the same with interest at the rate of 24% per annum. Thereafter, in spite of repeated demands, the accused did not pay the amount. Subsequently, the accused issued a cheque dated 24.1.2004 for Rs.72,000/- towards full and final settlement of the debt and took the promissory note back. On presentation of the cheque, the same was dishonoured. Even though a legal notice was issued, the petitioner-accused did not give any reply. After recording the sworn statement of the complainant, the learned VI Additional Munsif Magistrate, Guntur, took cognizance for the offence under Section 138 of the Negotiable Instruments Act and numbered it as C.C.No.113 of 2004.

3. During the course of trial, P.Ws.1 and 2 were examined and Exs.P1 to P5 were marked on behalf of the complainant. D.Ws.1 to 3 were examined on behalf of the accused.

4. 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 simple imprisonment for a period of four months and to pay a fine of Rs.2,000/- in default to suffer simple imprisonment for one month. Out

of the said fine amount, Rs.1,500/- was awarded to the complainant as compensation. Aggrieved by the same, the petitioner-accused filed appeal viz., CrI.A.No.360 of 2005 before the I Additional Sessions Judge, Guntur. On re-appreciation of evidence, the learned Additional Sessions Judge dismissed the appeal. Aggrieved by the same, the petitioner-accused filed this revision.

5. Learned Counsel for the petitioner submitted that the Courts below failed to appreciate the evidence in a proper perspective and that there is no legally enforceable debt and that the complainant has failed to discharge his burden in proving that there is legally enforceable debt.

6. Perused the entire material available on record. The evidence of P.Ws.1 and 2 coupled with Exs.P1 to P3 establishes the guilt of the accused for the offence under Section 138 of the negotiable Instruments Act. Nothing was elicited from the cross-examination of P.Ws.1 and 2 to disprove their testimony. The Courts below have rightly appreciated the evidence. In the facts and circumstances of the case and in view of the concurrent findings of both the Courts below, this Court is not inclined to interfere with the judgment of the lower appellate Court.

7. At this stage, the learned Counsel for the petitioner prayed for taking a lenient view.

8. Considering the facts and circumstances of the case and the submissions made by the learned Counsel for the petitioner, this Court is inclined to set aside the sentence of imprisonment.

9. 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 against the petitioner-accused for the said offence is set aside, while confirming the

sentence of fine with default sentence and compensation. In addition to the said fine amount, the petitioner is directed to pay a sum of Rs.70,000/- as additional fine amount on or before 20th October, 2016, in default of payment of the said additional fine amount, the petitioner-accused shall suffer simple imprisonment for a period of three months. On payment of the additional fine amount, the same shall also be given to the complainant as compensation.

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

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RAJA ELANGO, J

Dated: 22th August, 2016

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THE HON'BLE SRI JUSTICE RAJA ELANGO

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