

THE HON'BLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.574 of 2005

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 02.03.2005, passed in CrI.A. No.327 of 2004 by the I-Additional Sessions Judge, Guntur, whereby the learned Sessions Judge dismissed the appeal by confirming the conviction and sentence imposed against the petitioner by the Judicial Magistrate of First Class for Excise, Guntur, in CC No.230 of 2004, vide judgment, dated 21.07.2004.

The case of the prosecution is that the petitioner borrowed an amount of Rs.50,000/- from the de facto complainant on 15.07.2002 for the purpose of constructing a house, promising to repay the same within two months. But, he did not repay the amount as promised. On the repeated requests made by the de facto complainant, the petitioner issued a cheque for Rs.50,000/- drawn on Syndicate Bank, Extension Counter, A.C. College, Guntur. When the said cheque was presented by the de facto complainant in his bank for collection, the same was returned with a memo stating 'insufficient funds.' Therefore, the complainant issued a legal notice to the petitioner, but the petitioner avoided to receive the notice and hence, the de facto complainant filed a complaint for the offence under Section 138 of the Negotiable Instruments Act (for short 'NI Act').

The case was taken on file for the offence under Section 138 of the NI Act. On appearance of petitioner, 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-7. No oral or documentary evidence was adduced on behalf of the petitioner.

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.327 of 2004 before the I-Additional Sessions Judge, Guntur. The learned Sessions Judge dismissed the appeal by confirming the conviction and sentence of imprisonment recorded by trial Court, vide judgement impugned.

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 and prayed that leniency may be shown while imposing sentence.

Considering the facts and circumstances of the case and also the time elapsed, the sentence of imprisonment imposed against the petitioner 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 by the Judicial Magistrate of First Class for Excise, Guntur, in CC No.230 of 2004 vide judgment, dated 21.07.2004, as confirmed by the I-Additional Sessions Judge, Guntur, in CrI.A. No.327 of 2004, vide judgment, dated 02.03.2005, for the offence under Section 138 of the Negotiable Instruments Act, is confirmed. However, the sentence of imprisonment imposed by the

trial Court, as confirmed by the appellate Court, against the petitioner for the above offence is set aside and the petitioner is sentenced to pay an additional fine of Rs.50,000/- on or before 29.09.2016 and 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

August 02, 2016.
KTL