

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1093 of 2006

JUDGMENT:

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1. This Criminal Revision Case is filed by the petitioner-accused challenging the judgment dated 5.6.2006 passed in CrI.A.No.377 of 2004 by the IV Additional District & Sessions Judge, Guntur.

2. Brief facts of the case are as follows:

P.W.1 filed a complaint against the petitioner-accused for the offence under Section 138 of the Negotiable Instruments Act alleging that on 12.6.2002, the petitioner-accused approached P.W.1-complainant, who is doing business in prawn, fish, poultry and cattle feeds, and opened a katha in the office of P.W.1-complainant and purchased prawn feed from P.W.1 on credit basis from time to time worth Rs.1,19,500/-. The accused made some part payments. On repeated demands, the accused issued a cheque for Rs.1,00,000/- on 23.6.2003. When P.W.1-complainant presented the cheque, it was dishonoured. Then, P.W.1-complainant got issued a legal notice on 19.9.2003. After receiving the notice, the accused sent Rs.8,000/- by way of a demand draft. He failed to pay the amount due to P.W.1. Hence, P.W.1-complainant filed the present complaint. The case against the petitioner-accused was taken on file by the V Additional Munsif Magistrate, Guntur for the offence under Section 138 of the Negotiable Instruments Act. When the accused was examined for the above offence, he pleaded not guilty and claimed to be tried.

3. During the course of trial, P.Ws.1 to 3 were examined and Exs.P1 to P16 were marked on behalf of the complainant. No oral or documentary evidence was adduced on behalf of the accused.

4. On appreciation of both oral and documentary evidence, the trial Court found the petitioner-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.3,000/- in default to suffer simple imprisonment for two months. Aggrieved by the same, the petitioner-accused filed appeal viz., CrI.A.No.377 of 2004 before the IV Additional District & Sessions Judge Guntur. The said appeal was dismissed. Hence, the petitioner filed the present revision.

5. Learned Counsel for the petitioner submitted that there are discrepancies in the evidence of P.Ws.1 to 3 and that there is absolutely no legally enforceable debt and that the Courts below failed to appreciate the evidence in a proper perspective.

6. Learned Counsel appearing for the 1st respondent submitted that the judgment of the trial Court does not warrant any interference.

7. From the material on record, it is obvious that the 1st respondent-complainant established the case and proved the guilt of the petitioner-accused for the offence under Section 138 of the Negotiable Instruments Act by adducing both oral and documentary evidence. Both the Courts below gave concurrent findings with regard to the guilt of the petitioner-accused for the offence under Section 138 of the Negotiable Instruments Act. In view of the concurrent findings of the Courts below, this Court is not inclined to interfere with the judgment under revision.

8. At this stage, the learned Counsel for the petitioner-accused submitted that the petitioner is the sole breadwinner of his family and he has to look after his children and therefore, a lenient view may be taken.

9. 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.

10. In the result, the conviction recorded by the learned IV Additional District & Sessions Judge, Guntur, against the petitioner-accused for the offence under Section 138 of the Negotiable Instruments Act, vide judgment dated 5.6.2006 in CrI.A.No.377 of 2004 is confirmed. However, the sentence of four months simple imprisonment imposed for the said offence is set aside. The sentence to pay fine of Rs.3,000/- with default sentence is confirmed.

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

JUSTICE RAJA ELANGO

Dated:26th July, 2016
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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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