

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE Nos.1671, 1674 1675, 1676 AND 1677 OF 2009

COMMON ORDER:

The petitioners and the respondents in all the five criminal revision cases are one and the same and that the cause of action arises in all these cases is also the same, these criminal revision cases are being disposed of by this common order.

The CrI.R.C.Nos.1671 of 2009, 1674 of 2009, 1675 of 2009, 1676 of 2009 and 1677 of 2009 are filed being aggrieved by the orders, dated 05.10.2009, passed in Criminal Appeal Nos.241 of 2009, 243 of 2009, 240 of 2009, 239 of 2009 and 242 of 2009 respectively by the Court of the II Additional Metropolitan Sessions Judge, Hyderabad, whereby the learned Sessions Judge dismissed the Criminal Appeals by confirming the orders of conviction and sentence, dated 23.07.2009, passed in C.C.Nos.391 of 2008, 438 of 2008, 437 of 2008, 393 of 2008 and 427 of 2008 by the Court of the XIV Additional Judge cum XVIII Additional Chief Metropolitan Magistrate at Hyderabad, whereby the learned Judge convicted the petitioners herein for the offence under Section 138 of the Negotiable Instruments Act and sentenced A.2, being the Director of A.1 company, to suffer simple imprisonment for a period of one year and to pay a fine of Rs.2,000/- and Rs.5,000/- by A.1 company and A.2 respectively, and that the fine of Rs.2,000/- imposed on A.1 company should be payable by A.2 being the Director of A.1 company and in default of said fine amount, A.2 has to undergo simple imprisonment for a period of thirty days, in all the five cases.

Heard and perused the material available on record.

After arguing for sometime, learned counsel for the petitioners submits that during the period of trial, the petitioners paid the entire amount to the complainant Bank/first respondent herein, that the same was acknowledged by the complainant Bank, that the said fact was brought to the notice of the lower appellate Court and that the same was recorded in the Judgments of the lower appellate Court.

Learned counsel further submits that even after making the entire payment to the complainant Bank, the prosecution continued its case and that the petitioners were erroneously convicted and sentenced for the offence under Section 138 of the Negotiable Instruments Act and as such, he seeks to set aside the orders of the lower appellate Court and trial Court, as the petitioners are entitled for acquittal.

This Court is of the view that when once basing on the cause of action the trial started, until and unless the parties entered into compromise by way of invoking Section 147 of the Negotiable Instruments Act, this Court, in criminal revision case, cannot acquit the petitioners on the reason that the petitioners made payment to the complainant Bank. Hence, the conviction imposed on the petitioners herein, by the trial Court, which was also confirmed by the lower appellate Court, in all the five cases, is hereby confirmed. However, taking into consideration the fact that the petitioners made entire payment to the complainant Bank and that the complainant Bank has also given a Letter, dated 04.08.2016, stating that the complainant Bank has received entire amount from the petitioners towards full and final settlement, taking a lenient view, the sentence of imprisonment imposed on A.2, being the Director of A.1 company, in all the five cases, is hereby set aside. This Court is not inclined to interfere with the fine amount imposed on A.1 and A.2 and the default clauses, in all the five cases.

The Criminal Revision Case are accordingly disposed of. Consequently, the miscellaneous petitions, if any pending in these revision cases, shall stand closed.

JUSTICE RAJA ELANGO

01.09.2016
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