

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.767 OF 2008

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 02.06.2008, in CrI.A.No.428 of 2007, on the file of the learned VII Additional Metropolitan Sessions Judge, Hyderabad, whereunder and whereby the conviction of the petitioner/accused to undergo Simple Imprisonment for a period of six (6) months and to pay a fine of Rs.3,000/-, in default to suffer simple imprisonment for a period of one (1) month for the offence punishable under Section 138 of the Negotiable Instruments Act (for short, "the Act"), recorded in judgment, dated 18.10.2007, in C.C.No.1437 of 2004, by the learned II Additional Chief Metropolitan Magistrate, Hyderabad, was confirmed.

2. The brief facts, that are necessary for the disposal of the present Criminal Revision Case, may be stated as follows:

The accused requested the complainant among other debts for a sum of Rs.60,000/- for his business purpose and the said amount was advanced by the complainant on 19.12.2001. The accused received Rs.60,000/- in cash by executing a receipt and also promissory note, dated 19.12.2001, from the complainant with a promise to discharge the same within short period and to discharge of that liability. On repeated requests of the complainant, the accused finally issued a cheque bearing No.989440, dated 16.04.2004, drawn on Syndicate Bank, M.G. Road Branch, Secunderabad. The complainant presented the said cheque for clearance through his bankers i.e., Tirumala Co-operative Bank, Abids, Hyderabad, after repeated oral requests of the accused finally

on 21.07.2004, but the said cheque was returned on 22.07.2004 stating 'FUNDS INSUFFICEINT'. The complainant got issued legal notice on 12.08.2004 and the accused received the notice and acknowledged the receipt on 14.08.2004 and gave a reply noticed, dated 25.08.2004, with false and baseless reasons and failed to make payment, and as such, the accused is liable for the offence punishable under Section 138 of the N.I. Act.

3. The accused was examined under Section 251 Cr.P.C. and when the substance of accusation for an offence under Section 138 of the Negotiable Instruments Act was framed, read over and explained to the accused, he pleaded not guilty and claimed to be tried.

4. To substantiate the charges, the prosecution examined P.Ws.1 & 2 and got marked Exs.P-1 to P-8.

5. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating evidence appearing against him in the evidence of P.Ws.1 & 2. He denied the same. On behalf of the accused, D.Ws.1 & 2 were examined and no documents were marked.

6. The trial Court, after considering the evidence on record, found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced as stated above. On appeal, the said conviction and sentence was confirmed. Hence, the present Criminal Revision Case.

7. Heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondent and perused the material available on record.

8. It is brought to the notice of this Court by Sri S. Sreenivasa Sarma, learned counsel for the petitioner that during the pendency of this case, in E.P.No.59 of 2009 in O.S.No.5609 of 2003, the petitioner herein deposited a sum of Rs.75,000/- through D.D.No.170796, dated 06.07.2012, of HDFC Bank, Secunderabad Branch and the said E.P. was closed by the XI Junior Civil Judge, Civil Court, Secunderabad, vide docket order, dated 23.07.2012.

9. Considering the said fact, the Criminal Revision Case is disposed of with the following direction:

The conviction imposed by the trial Court and confirmed by the lower appellate Court is hereby confirmed. However, the sentence of imprisonment imposed on the petitioner is hereby set aside. However, the sentence of fine imposed by the trial Court shall not be interfered with.

10. Accordingly, the Criminal Revision Case is disposed of. Miscellaneous Petitions, if any, pending in this criminal revision case stands closed.

RAJA ELANGO, J

Date: 9th September, 2016

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