

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.1802 OF 2004

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner/accused challenging the judgment, dated 7.9.2004, in Criminal Appeal No.153 of 2003 on the file of the II Additional Sessions Judge, Nellore whereunder and whereby, the learned Sessions Judge dismissed the appeal filed by the petitioner against the judgment, dated 8.9.2004, in C.C.No.773 of 2000 on the file of the Special Judicial Magistrate of First Class for Mobile, Nellore.

2. Respondent No.2 herein is the complainant and the petitioner herein is the accused. The petitioner borrowed an amount of Rs.1,00,000/- from respondent No.2 on 13.7.1997. She paid Rs.10,000/- on 6.10.1998 towards part satisfaction of the debt and thereafter, failed to repay the balance. On 16.10.1998, she issued two cheques for Rs.20,000/- each to be drawn at Andhra Bank, Chinna Bazar, Nellore towards part satisfaction of the loan. When the same were presented for encashment, they were dishonored due to insufficiency of funds. Hence, respondent No.2 issued legal notice and as the petitioner did not choose to repay the amount, he filed C.C.No.773 of 2000 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. After due trial, the learned Magistrate found the accused guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and accordingly, convicted and sentenced her to undergo simple imprisonment for a period of three months and to pay a fine of Rs.5,000/- in default, to suffer simple imprisonment for a period of three months. Aggrieved thereby, the petitioner preferred the aforementioned appeal and the same was dismissed by the learned Sessions Judge confirming the

judgment of the trial Court on the ground that there was no representation for the appellant. Challenging the said judgment, the petitioner filed this Criminal Revision Case.

3. Learned counsel for the petitioner submitted that she has given no objection for engaging another counsel in the year 2011 itself and till date, the petitioner has not engaged any counsel. As far as respondent No.2 is concerned, it is evident from the cause list that no such person is available at the given address.

4. Heard and perused the material available on record.

5. The matter pertains to the year 2004. Basing on the concurrent findings of the Courts below, the petitioner was rightly convicted and hence, this Court is not inclined to interfere with the conviction imposed by the Courts below. However, taking into consideration of the fact that the petitioner is a lady aged 63 years and suffering from several health problems, the sentence of imprisonment is set aside.

6. In the result, the conviction imposed against the petitioner in the judgment, dated 7.9.2004, in Criminal Appeal No.153 of 2003 on the file of the II Additional Sessions Judge, Nellore for the offence punishable under Section 138 of the Negotiable Instruments Act is confirmed. However, the sentence of imprisonment imposed by the Court below for the said offence is set aside. As far as the sentence of payment of fine of Rs.5,000/- is concerned, the petitioner is directed to pay the said fine amount. However, the default clause of sentence of simple imprisonment for a period of three months is also set aside.

7. Accordingly, this Criminal Revision Case is partly allowed.

8. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

22.7.2016

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Date: 22.7.2016

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