

THE HON'BLE SRI JUSTICE RAJA ELANGO
CRL.R.C.M.P.Nos.544 OF 2006 AND 2496 OF 2016
AND
CRIMINAL REVISION CASE No.2435 OF 2016

ORDER:

The Crl.R.C.M.P.No.544 of 2006 is filed to condone the delay of 255 days in preferring the Criminal Revision Case against the Judgment dated 25.03.2005 passed in Criminal Appeal No.69 of 1999 by the Court of the Additional Metropolitan Sessions Judge, Vijayawada.

Learned counsel for the petitioner submits that this Court ordered notice on 07.03.2006 and in pursuance of the same, the petitioner sent personal notice to the first respondent three times but the first respondent did not accept the said notice and as such, the notice was returned unserved. He further submits that the first respondent company is not in existence at present. Hence, he filed Crl.R.C.M.P.No.2496 of 2016 seeking to permit the petitioner to take out notice on the first respondent by way of substituted service.

In view of the above submission of the learned counsel for the petitioner that the first respondent company is not in existence now, this Court of the view that the delay in preferring the Criminal Revision Case is liable to be condoned and as such, the delay is hereby condoned.

Insofar as the main case is concerned, the petitioner has preferred the present criminal revision case by invoking the provisions under Sections 397 and 401 of Code of Criminal Procedure (Cr.P.C.,) being aggrieved by the order, dated 25.03.2005, passed in Criminal Appeal No.69 of 1999 by the Court of the Additional Metropolitan Sessions Judge, Vijayawada, whereby the learned Judge dismissed the appeal by confirming the order dated 02.04.1999, passed in C.C.No.242 of 1997 by the III Metropolitan Magistrate, Vijayawada, whereby the learned Judge convicted the petitioner herein for the offence under Section 138 of the

Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.5,000/- (Rupees five thousand only), in default of payment of fine, to undergo simple imprisonment for a period of two months.

Heard and perused the material available on record.

After evaluating and examining the material available on record and considering the respective submissions of the learned counsel for both parties, this Court is of the view that there are no special or adequate reasons, warranting interference by this Court with the concurrent findings of the Courts below.

At this stage, the learned counsel for the petitioner confines his argument with regard to quantum of sentence, and submits that as the petitioner is having children and he is the only breadwinner in his family, a lenient view may be taken by this Court.

Considering the submissions made by the learned counsel for the petitioner and the nature of offence, this Court is inclined to take a lenient view.

In the result, the conviction recorded by the trial Court, which is confirmed by the lower appellate Court, against the petitioner herein for the offence Section 138 of the Negotiable Instruments Act is hereby confirmed, but, taking into consideration the fact of pendency of the case from the year 1997, the sentence of imprisonment is set aside and the sentence of fine of Rs.,5,000/- (Rupees five thousand only) is hereby enhanced to Rs.50,000/- (Rupees fifty thousand only). The petitioner is directed to pay the said fine of Rs.50,000/- (Rupees fifty thousand only) on or before 30.09.2016, and in default of payment of the fine, the petitioner shall undergo simple imprisonment for a period of six months.

The Criminal Revision Case is accordingly disposed of. Consequently, the miscellaneous petitions, if any pending in this revision case, shall stand closed.

JUSTICE RAJA ELANGO

28.07.2016
pln

