

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.1188 of 2008

ORDER:

The Criminal Revision Case is filed against the Judgment dated 06.05.2008 in Criminal Appeal No.19 of 2007 on the file of the VII Additional District & Sessions Judge, Ongole, by and under which the conviction and sentence imposed against the petitioner/accused by the learned II Additional Judicial Magistrate of First Class, Ongole in CC.No.452/2005, dated 31.01.2007, was confirmed.

Heard the learned counsel appearing for the petitioner/accused and the learned counsel appearing for the 1st respondent/complainant.

The 1st respondent/*de facto* complainant filed the complaint alleging that he is the Authorized officer of M/s.Shriram City Union Finance Limited. It is alleged that the petitioner/accused obtained consumer loan from the complainant on 25.08.2003 and purchased consumer articles by entering into an agreement dated 25.08.2003 and issued post dated cheques for discharge of the debt. Out of the cheques issued, four cheques dated 07.11.2004, 07.12.2004, 07.01.2005 and 07.02.2005 for Rs.1,954/- each were bounced when they were presented for collection for want of sufficient funds. The complainant issued legal notice dated 14.05.2005 to the accused, which was returned with a false endorsement on 26.05.2005.

During the course of trial, the complainant examined himself as PW.1 and produced Exs.P1 to P12. The petitioner/accused denied the evidence on record. In defence, the petitioner/accused examined herself as D.W.1 and no documents were produced on her behalf.

The petitioner/accused was tried for an offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') and by Judgment dated 31.01.2007, the learned Magistrate found the

petitioner/accused guilty of the offence punishable under Section 138 of the Act and convicted and sentenced her to undergo simple imprisonment for 3 (three) months and directed to pay Rs.9,000/- (Rupees nine thousand only) to the complainant towards compensation.

Against the said judgment, the petitioner/accused preferred the appeal and the learned appellate Court confirmed the findings of the trial Magistrate and dismissed the appeal. Aggrieved by the same, the petitioner/accused preferred the present revision.

The point for consideration is as to whether the Judgments of the Courts below is based on legally acceptable evidence or whether it needs interference?

Point:

A perusal of the record shows that the petitioner/accused has executed a loan agreement for purchase of household articles and issued cheques in question, each cheque for a sum of Rs.1,954/-, they are issued on different dates, viz., 07.11.2004, 07.12.2004, 07.01.2005 and 07.02.2005 respectively. Apparently, these cheques are issued towards EMI payment to the loan obtained by the petitioner/accused. The petitioner/accused also admitted that she signed the cheques, but her contention is that she issued the said cheques to Hari T.V.Home Needs as a surety on behalf of one Lakshminarayana but not to the complainant.

Both the Courts below on appraisal of oral and documentary evidence found that the accused herself had issued the cheques in question to the complainant, which were dishonoured. I do not find any infirmity warranting interference with the said findings. However, it is noticed that the petitioner/accused was sentenced to undergo simple imprisonment for a period of 3 months, in addition to the payment of Rs.9,000/- towards compensation.

Considering the facts and circumstances of the case and since

the petitioner/accused is a lady, I feel that ends of justice would be met if the compensation amount of Rs.9,000/- is enhanced to Rs.15,000/- by setting aside the imprisonment of 3 months simple imprisonment.

In the result, the sentence of imprisonment of 3 months simple imprisonment imposed against the petitioner/accused by both the Courts below is set aside, subject to condition of the petitioner/accused pays to the 1st respondent/complainant a sum of Rs.15,000/- (Rupees fifteen thousand only) towards compensation, within a period of 2 (two) months from today, failing which, the conviction and sentence recorded by both the courts below shall stand confirmed.

The Criminal Revision Case is accordingly disposed of.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date:04.01.2016

Dsr