

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.366 OF 2005

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner/appellant/accused challenging the judgment, dated 3.3.2005, in Criminal Appeal No.263 of 2004 on the file of the I Additional Sessions Judge, Guntur whereunder and whereby, the learned Sessions Judge dismissed the appeal filed by the petitioner against the judgment, dated 2.7.2004, in C.C.No.335 of 2003 on the file of the V Additional Munsif Magistrate, Guntur.

2. The complainant filed a complaint against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 with the following averments:

The complainant and the eldest son of the accused by name Srinivasa Rao are close friends. Taking advantage of this friendship, the accused borrowed Rs.80,000/- from the complainant on 27.5.2002 as hand loan. One T.Venkateswarlu and one K.Sambasiva Rao were present at the time of giving money to the accused. On repeated demands, the accused issued cheque, dated 22.1.2003, bearing No.0456375 for Rs.92,000/- drawn on Oriental Bank of Commerce, Brodipet, Guntur and requested the complainant to present the cheque for collection after 20.2.2003. As per the request of the accused, the complainant presented the cheque for collection on 24.2.2003 and it was dishonoured on 25.2.2003 with an endorsement 'account closed'. The complainant got issued legal notice, dated 5.3.2003 to the accused. The accused

received the notice on 6.3.2003 and issued reply with false averments. In the legal notice, dated 5.3.2003, there was a typographical mistake with regard to the date of dishonour of cheque. The date of dishonour of cheque was mentioned as 21.2.2003. But the actual date of dishonour is 25.2.2003. A further correction notice, dated 8.3.2003, was sent to the accused and the same was received by the accused. The complainant filed O.S.No.378 of 2003 on the file of the I Additional Junior Civil Judge, Guntur for recovery of the hand loan. Thus, the complainant filed the complaint against the accused for the offence under Section 138 of the Negotiable Instruments Act.

3. Cognizance was taken against the accused for the offence under Section 138 of the Negotiable Instruments Act. After appearance of the accused, copies of the documents were supplied to him and he was examined under Section 251 Cr.P.C. for which, he denied the offence, pleaded not guilty and claimed to be tried. So, he was placed for trial.

4. On behalf of the prosecution, P.Ws.1 to 5 were examined and Exs.P-1 to P-9 were got marked. After closure of the prosecution evidence, the accused was examined under Section 313(b) Cr.P.C. for which, he denied the evidence. On behalf of the accused, D.Ws.1 and 2 were examined and Exs.D-1 to D-4 were got marked.

5. After considering both oral and documentary evidence, the trial Court found the accused guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and accordingly, convicted and sentenced him to undergo simple imprisonment for a period of four months and to pay a fine of

Rs.3,000/- and in default of payment of fine, to undergo simple imprisonment for a period of two 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 the trial Court has not committed any error. Challenging the said judgment, the petitioner filed this Revision Case.

6. Heard and perused the material available on record.

7. Considering all the facts and circumstances of the case and from the material available on record, both the Courts below rightly came to the conclusion that the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act and accordingly, convicted him as stated supra. In view of the concurrent findings of both the Courts below, this Court is not inclined to interfere with the conviction imposed against the petitioner.

8. At this stage, learned counsel for the petitioner submitted that the petitioner has children and he has to maintain them and this is the first offence committed by him and hence, he prayed to reduce the sentence of imprisonment.

9. Considering the facts and circumstances of the case and the submission of the learned counsel for the petitioner, this Court is inclined to set aside the sentence of imprisonment and enhance the fine amount.

10. In the result, the conviction imposed against the petitioner/accused in the judgment, dated 2.7.2004, in C.C.No.335

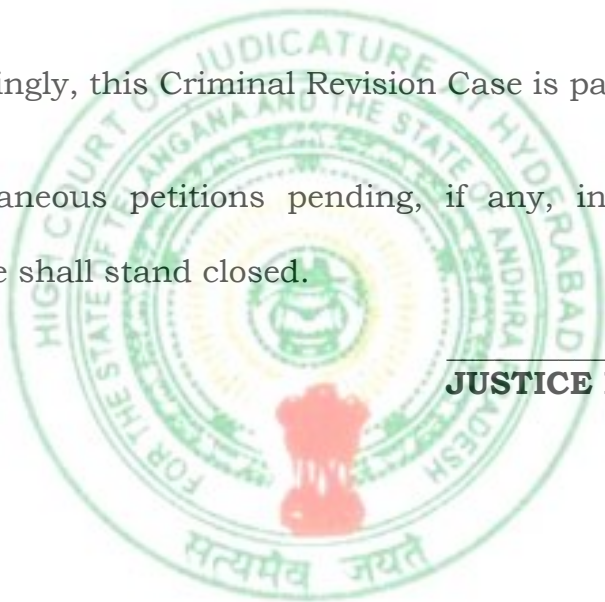
of 2003 on the file of the V Additional Munsif Magistrate, Guntur, which was confirmed in the judgment, dated 3.3.2005, in Criminal Appeal No.263 of 2004 on the file of the I Additional Sessions Judge, Guntur for the offence punishable under Section 138 of the Negotiable Instruments Act is confirmed. However, the sentence of imprisonment imposed by the Courts below for the said offence is set aside and the fine amount of Rs.3,000/- is enhanced to Rs.10,000/- (Rupees ten thousand only). The petitioner shall pay the said amount on or before 30.9.2016 and in default, he shall undergo rigorous imprisonment for a period of one month.

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

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

30.8.2016
AMD

JUSTICE RAJA ELANGO



THE HONOURABLE SRI JUSTICE RAJA ELANGO



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Date: 30.8.2016

AMD