

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1407 of 2006

JUDGMENT:

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1. This Criminal Revision Case is filed by the petitioner-accused challenging the judgment dated 11.8.2006 passed in CrI.A.No.138 of 2005 by the III Additional District & Sessions Judge, Ongole.

2. Brief facts of the case are as follows:

The petitioner-accused borrowed an amount of Rs.70,000/- from the complainant on 13.6.2002 for his family expenses and business purpose and executed a promissory note on the same day agreeing to repay the same with interest at the rate of 24% per annum either to the complainant or his order on demand. Subsequently, in spite of repeated demands made by the complainant personally and through others, the accused gave a cheque for Rs.68,400/- on 24.12.2002 to the complainant towards part payment of the said pronote debt. When the cheque was presented the same was returned dishonoured. The complainant got issued a legal notice to the accused on 17.2.2003 demanding the accused to pay the cheque amount. But the accused gave reply on 3.3.2003 with false allegations. Hence, the complainant filed the complaint. The case was taken on file by the Additional Munsif Magistrate, Chirala, as C.C.No.294 of 2003 for the offence under Sections 138 and 142 of the Negotiable Instruments Act against the accused. When the accused was examined for the above offence, he pleaded not guilty and claimed to be tried.

3. During the course of trial, P.Ws.1 to 4 were examined and Exs.P1 to P7 were marked on behalf of the complainant. D.W.1 was examined on behalf of the accused. No documents were marked on his behalf.

4. On appreciation of both oral and documentary evidence, the trial

Court found the petitioner-accused guilty for the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo simple imprisonment for a period of six months and to pay Rs.1,00,000/- towards compensation to the complainant in default to suffer simple imprisonment for six months. Aggrieved by the same, the petitioner-accused filed appeal viz., CrI.A.No.138 of 2005 before the III Additional District & Sessions Judge (Fast Track Court), Ongole. The said appeal was dismissed. Hence, the petitioner filed the present revision.

5. Learned Counsel for the petitioner submitted that there are discrepancies in the evidence of P.Ws.2 and 3 and that the material witnesses were not examined and that there is absolutely no legally enforceable debt and that the trial Court failed to appreciate the evidence in a proper perspective.

6. From the material on record, it is apparent that the evidence adduced on behalf of the complainant is very consistent and corroborative and nothing was adduced by the petitioner-accused to disprove the same. The evidence on record establishes the guilt of the petitioner-accused for the offence under Section 138 of the Negotiable Instruments Act. Both the Courts below gave concurrent findings with regard to the guilt of the petitioner-accused for the offence under Section 138 of the Negotiable Instruments Act. In view of the concurrent findings of the Courts below, this Court is not inclined to interfere with the judgment under revision.

7. At this stage, the learned Counsel for the petitioner-accused submitted that the petitioner is the sole breadwinner of his family and he has to look after his children and therefore, a lenient view may be taken.

8. Considering the facts and circumstances of the case and the submissions made by the learned Counsel for the petitioner, this Court

is inclined to set aside the sentence of imprisonment.

9. In the result, the conviction recorded by the learned III Additional District & Sessions Judge (Fast Track Court), Ongole, against the petitioner-accused for the offence under Section 138 of the Negotiable Instruments Act vide judgment dated 11.8.2006 in CrI.A.No.138 of 2005 is confirmed. However, the sentence of six months simple imprisonment imposed for the said offence is set aside. The sentence to pay compensation of Rs.1,00,000/- to the complainant and the default sentence are confirmed.

10. Accordingly, the Criminal Revision Case is partly allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:26th July, 2016

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