

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.672 of 2008

JUDGMENT:

1. This revision case is filed by the petitioner-accused challenging the judgment dated 18.3.2008 passed by the II Additional Sessions Judge, Warangal in CrI.A.No.42 of 2006.

2. Brief facts of the case are as follows:

The complainant and the accused are acquainted with each other. The accused obtained hand loan of Rs.10,000/- from the complainant for the purpose of his personal needs. On repeated demands made by the complainant, the accused issued a cheque for Rs.10,000/- on 31.3.2000 drawn on State Bank of Hyderabad, Jangaon Branch in favour of the complainant. On presentation, the said cheque was dishonoured with an endorsement "insufficient funds". Then, the complainant got issued a legal notice to the accused. But the accused did not repay the amount. Hence, the complainant filed a private complaint against the accused before the Judicial First Class Magistrate, Jangaon.

3. The learned Magistrate took the complaint on file for the offence under Section 138 of the Negotiable Instruments Act and numbered it as C.C.No.732 of 2000.

4. During the course of trial, P.Ws.1 to 3 were examined and Exs.P1 to P7 were marked on behalf of the complainant. D.Ws.1 and 2 were examined and Exs.D1 to D6 were marked on behalf of the accused. On appreciation of oral and documentary evidence, the trial Court found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to suffer simple imprisonment for a period of six months and to pay a fine of

Rs.1,000/- in default to suffer simple imprisonment for one month. Aggrieved by the same, the petitioner-accused filed appeal viz., CrI.A.No.42 of 2006 before the II Additional Sessions Judge, Warangal. The said appeal was dismissed by the learned Additional Sessions Judge. Hence, the petitioner filed this revision.

5. Heard and perused the material available on record.

6. Learned Counsel for the petitioner submitted that the Courts below failed to appreciate the evidence in a proper perspective and that there is no legally enforceable debt and that there is no legal evidence to substantiate that the petitioner obtained hand loan from the complainant.

7. Perused the entire material available on record. The evidence of P.Ws.1 to 3 coupled with Exs.P1 to P7 establishes the guilt of the accused for the offence under Section 138 of the Negotiable Instruments Act. Nothing was elicited from the cross-examination of P.Ws.1 to 3 to disprove their testimony. The Courts below have rightly appreciated the evidence. In the facts and circumstances of the case and in view of the concurrent findings of both the Courts below, this Court is not inclined to interfere with the judgment of the lower appellate Court.

8. At this stage, the learned Counsel for the petitioner prayed for taking a lenient view.

9. Considering the facts and circumstances of the case and the submissions made by the learned Counsel for the petitioner and taking into consideration that the complaint in the present case pertains to the year 2000, this Court is inclined to set aside the sentence of imprisonment.

10. In the result, the conviction recorded by the Courts below

against the petitioner-accused for the offence under Section 138 of the Negotiable Instruments Act is confirmed. However, the sentence of imprisonment imposed by the Courts below against the petitioner-accused for the said offence is set aside, while confirming the sentence of fine with default sentence.

11. Accordingly, the Criminal Revision Case is partly allowed. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:27th August, 2016

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