

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

Criminal Revision Case No.1533 of 2007

ORDER:

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This Criminal Revision Case is directed against the judgment dated 01-11-2007 of the learned II Additional Sessions Judge, Kadapa at Proddatur, in Criminal Appeal No.278 of 2005, confirming the conviction and sentence of rigorous imprisonment for a period of three months and fine of Rs.3,000/-, in default, simple imprisonment for three months for the offence punishable under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 imposed against the revision petitioner/accused by the learned I Additional Judicial Magistrate of First Class, Proddatur by judgment dated 13-12-2005 in S.T.C.No.55 of 2004.

The factual background leading to filing of this Criminal Revision Case is that the revision petitioner/accused issued three cheques for Rs.50,000/- each drawn on Vysya Bank, Proddatur in favour of the complainant towards discharge of loan amount and when the said cheques were presented, the same were dishonoured for the reason of insufficient funds. When the complainant got issued a registered legal notice, the same was returned unserved. When the revision petitioner/accused did not make any payment due under the cheques even after issuance of statutory notice, a complaint was filed under Section 138 of the Negotiable Instruments Act. After completion of trial, the petitioner/accused was found guilty of the offence punishable under Section 138 of the Act and he was convicted and sentenced to undergo rigorous imprisonment for a period of three months and also to pay a fine Rs.3,000/- with default sentence of three months

for the offence punishable under Section 138 of the Act. The revision petitioner/accused was also directed to pay compensation of Rs.1,50,000/-. Questioning the said conviction and sentence, the petitioner/accused filed Criminal Appeal No.278 of 2005 before the learned II Additional Sessions Judge, Kadapa at Proddatur, and the learned II Additional Sessions Judge, on perusing the judgment of the trial Court and the provisions of Section 138 of Negotiable Instruments Act, dismissed the appeal, confirming the conviction and sentence imposed against the revision petitioner by the trial Court. Aggrieved by the aforesaid conviction and sentence, the present Criminal Revision Case is filed.

Heard the learned counsel for the revision petitioner and the learned counsel for the 2nd respondent.

Learned counsel for the revision petitioner submits that statutory notice as contemplated under Section 138 of N.I. Act was not issued to the revision petitioner/accused and in fact he did not receive such notice and that in the absence of issuance of any such statutory notice, which is mandatory one, the complaint cannot be sustained in law and therefore, the conviction and sentence imposed by the trial Court is liable to be set aside.

On the other hand, learned counsel for the 2nd respondent/complainant submits that the complainant issued the statutory notice to the revision petitioner/accused and the same was returned unserved with postal endorsement as "door locked" and that even after issuance of the said notice, the revision petitioner/accused did not make any effort to repay the amount. He further submits that the Court below was right in convicting and sentencing the revision petitioner/accused basing on oral and

documentary evidence on record and the judgments of the Court below do not suffer from any infirmity warranting interference of this Court.

I have given my earnest consideration to the judgments of the Court below as well as oral and documentary evidence on record. The specific case of the revision petitioner/accused is that the statutory notice as contemplated under Section 138 of N.I. Act was not issued to him and he did not receive the same, if such notice was actually issued. Per contra, the claim of the 2nd respondent/ complainant is that he issued the statutory notice vide Ex.P.5, which was returned with an endorsement as "Door locked" vide Ex.P.6 postal cover. The evidence of PW.1-complainant shows that he was aware that the revision petitioner/accused was not in town by the time when he issued legal notice to him. His evidence further shows that he did not know as to whether the accused has knowledge about the legal notice issued by him or not. In such scenario, it cannot be presumed that the revision petitioner/accused was properly served with the statutory notice enabling him to discharge his liability. Mere return of postal cover with the endorsement is not deemed to have been served properly. It is not as though the revision petitioner/accused refused to receive the notice.

Be that as it may, during the pendency of the revision case, a notice in the revision was sent to the 2nd respondent/ complainant by the Registry, which was served on him on 17-06-2015, on which he endorsed that he does not intend to pursue the case and the said endorsement becomes a part of the record.

In that view of the matter, since the 2nd respondent/

complainant is not intending to pursue the case as per the endorsement made by him on 17-06-2015, as is evident from the proceeding sheet dated 20-01-2016, the conviction and sentence imposed against the revision petitioner/accused are liable to be set aside.

Accordingly, the Criminal Revision Case is allowed and the conviction and sentence imposed against the revision petitioner by the learned I Additional Judicial Magistrate of First Class, Proddatur by judgment dated 13-12-2005 in S.T.C.No.55 of 2004, as confirmed by the learned II Additional Sessions Judge, Kadapa, Proddatur by his order dated 01-11-2007 in Criminal Appeal No.278 of 2005, are set aside. Fine amount, if any, paid by the revision petitioner/ accused shall be refunded to him. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

M.S.K. JAISWAL, J

Date: 09-02-2016

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