

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1418 OF 2006

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 17.08.2006, in CrI.A.No.1 of 2006, on the file of the learned IV Additional District & Sessions Judge (Fast Track Court), Karimnagar, whereunder and whereby the conviction of the petitioner/accused to undergo Rigorous Imprisonment for a period of two (2) years term and to pay a fine of Rs.5,000/-, in default to suffer simple imprisonment for a period of two (2) months of the offence punishable under Section 138 of the Negotiable Instruments Act (for short, "the Act"), recorded in judgment, dated 20.12.2005, in C.C.No.973 of 2003, by the learned Additional Judicial Magistrate of First Class, Karimnagar District, was confirmed.

2. The brief facts, that are necessary for the disposal of the present Criminal Revision Case, may be stated as follows:

The complainant and the accused are related to each other. On the request of the accused, on 01.04.2003, the complainant borrowed an amount of Rs.1,50,000/- to the accused as hand loan for his family and legal necessities and the accused promised to repay the said loan amount within three months, but failed to do so. Later on 30.06.2003, the accused issued two cheques for Rs.75,000/- each in favour of the complainant in discharge of the said loan amount and when the complainant presented the cheques in the bank, the same were returned to him unpaid on 22.07.2003 on the ground of insufficiency of funds. When the complainant questioned the accused about the dishonour of the cheques, the accused requested the complainant to present the said cheques again in the bank and when the complainant presented the same cheques again the bank on 19.08.2003, the same were returned unpaid on 03.09.2003 on the ground of insufficiency of funds. On 15.09.2003, the complainant got issued legal notice to the accused calling upon him to pay the amount due under the cheques

within 15 days from the date of receipt of the said notice. The accused received the said notice and sent a reply notice on 29.09.2003 with false allegations and though he admitted issuance of cheques to the complainant, he claimed that he paid the loan amount to the complainant through receipts. Hence, the complaint.

3. The accused was examined under Section 251 Cr.P.C. and when the substance of accusation for an offence under Section 138 of the Negotiable Instruments Act was framed, read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried.

4. To substantiate the charges, the prosecution examined P.Ws.1 to 3 and got marked Exs.P-1 to P-17.

5. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating evidence appearing against him in the evidence of P.Ws.1 to 3. He denied the same. On behalf of the accused, D.W.1 was examined and Exs.D-1 to D-5 were marked.

6. The trial Court, after considering the evidence on record, found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced as stated above. On appeal, the said conviction and sentence was confirmed. Hence, the present Criminal Revision Case.

7. Now the point for determination is whether the judgments of both the Courts below are correct, legal and proper?

8. Heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondent and perused the material available on record.

9. The only point on which the petitioner tried to confess before this Court is that Exs.D-1 to D-3 marked by the petitioner are not appreciated by the trial Court as well as the lower appellate Court and it is the further contention of the petitioner that when he received the statutory notice, he has confirmed the receipt of amount by the complainant by way of issuance of receipts. This Court perused the

legal notice, dated 15.09.2003 and also the receipts issued by the complainant herein.

10. It is the case of the complainant that the signatures on the receipts are of the complainant, but the said signatures are misused since the complainant has given his bio-data for seeking appointment in various companies since the complainant is in search of a job in various companies and furthermore, the complainant and the accused are closely related to each other. Taking advantage of the said closeness, the accused has misused the signatures as if the complainant has received the money.

11. From a perusal of the reply notice and also the cash receipts, it is evident that the petitioner has not specifically stated in the reply notice the date on which the amount is returned and also the quantum of amount paid by way of three receipts concerned and further, even though the revenue stamps are shown in the cash receipts, the signatures are made by the complainant at a different place, but not on the revenue stamps, which creates a doubt about the receipts issued by the complainant.

12. In view of the said facts, the trial Court as well as the lower appellate Court disbelieved the rebuttal evidence adduced by the petitioner herein and hence, convicted and sentenced him as stated above.

13. This Court is of the view that since the matter is of conviction for the offence punishable under Section 138 of the Negotiable Instruments Act, and sentence of imprisonment is also on the higher side, the Criminal Revision Case is disposed of with the following direction:

The conviction imposed by the trial Court and confirmed by the lower appellate Court is hereby confirmed. However, the sentence of imprisonment imposed on the petitioner is hereby set aside. However, the fine amount of Rs.5,000/- imposed on the petitioner by the lower appellate Court is hereby enhanced to Rs.1,50,000/- (Rupees one lakh fifty thousand only), which shall be paid to the complainant towards

compensation. The petitioner/accused is directed to pay the fine amount imposed by this Court on or before 17.10.2016, failing which the petitioner shall undergo Simple Imprisonment for a period of three (3) months.

15. Accordingly, the Criminal Revision Case is disposed of. Miscellaneous Petitions, if any, pending in this criminal revision case stands closed.

RAJA ELANGO, J

Date: 21st July, 2016
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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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Date: 21st July, 2016

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