

THE HON'BLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.1080 of 2008

ORDER:

The petitioner-Accused preferred the present Criminal Revision Case by invoking the provisions under Sections 397 and 401 of the Code of Criminal Procedure being aggrieved by the judgment, dated 22.07.2008, passed in CrI.A. No.64 of 2008 by the IV Additional Metropolitan Sessions Judge, Hyderabad, whereby the learned Sessions Judge dismissed the appeal by confirming the Judgment, dated 05.02.2008, passed in CC No.304 of 2005 by the VII Additional Chief Metropolitan Magistrate at Hyderabad, whereby the learned Magistrate found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act (for short 'NI Act') and accordingly, convicted and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/- in default, to suffer simple imprisonment for a period of one month.

The case of the prosecution is that the petitioner and the de facto complainant are known to each other. Being an elder person at Godavarikhani, the petitioner agreed to deal with the transaction of purchase of land of an extent of 6 acres, belonging to one late Afzaluddin, to the de facto complainant and received an amount of Rs.6,00,000/- towards advance under an agreement of sale and thereafter, he failed to complete the said transaction and did not repay the amount to the de facto complainant. When the de facto complainant asked him to repay the said amount, he issued two cheques. The de facto complainant presented the cheques in his bank, but the same were returned due to insufficient funds. Hence, the de facto complainant filed a private complaint against the petitioner for the offence under Section 138 of NI Act.

The case was taken on file for the offence under Section 138 of the NI Act. On appearance of accused, the charge under Section 138 of the NI Act was read over and explained to him, for which, he pleaded not guilty and claimed to be tried.

To substantiate its case, the prosecution examined PWs.1 and 2, and got marked Exs.P-1 to P-11. No oral or documentary evidence was adduced on behalf of the accused.

The trial Court, after considering the evidence on record, found the petitioner guilty of the above charge, and accordingly, convicted and sentenced him as stated above. Challenging the same, the petitioner preferred appeal in Crl.A. No.64 of 2008 before the IV Additional Metropolitan Sessions Judge, Hyderabad. The learned Sessions Judge, after re-appreciation of the evidence, dismissed the appeal by confirming the judgment of the trial Court vide judgement impugned. Against the said judgment, this revision is filed.

Heard and perused the material available on record.

On perusing the judgments of both the Courts below, this Court is of the view that since the findings of both the Courts below are concurrent in nature, this Court is not inclined to interfere with the factual aspects of the case.

When this Court pointed out that there are no merits in the revision, learned counsel for the petitioner-accused submitted that a sum of Rs.2,00,000/- were already recovered from the petitioner by way of E.P. proceedings, and that the petitioner is retiring from his service by 31.07.2016 and he is ready to pay a sum of Rs.10,00,000/- towards final settlement under the E.P. proceedings, and restricted his arguments to the

quantum of sentence, and prayed that leniency may be shown while imposing sentence.

Considering the facts and circumstances of the case and in view of the submissions of the learned counsel for the petitioner, and also considering that the case pertains to the year 2005, this Court is inclined to pass the following order:

The conviction recorded against the petitioner by the VII Additional Chief Metropolitan Magistrate, Hyderabad, in CC No.304 of 2005 vide judgment, dated 05.02.2008, as confirmed by the IV Additional Metropolitan Sessions Judge, Hyderabad, in Crl.A. No.64 of 2008, vide judgment, dated 22.07.2008, for the offence under Section 138 of the Negotiable Instruments Act, is confirmed. However, the sentence of imprisonment imposed against the petitioner by the trial Court for the above offence is set aside and the fine amount is enhanced from Rs.5,000/- to Rs.10,00,000/- and the petitioner is directed to deposit the said fine amount on or before 30.09.2016, in default to suffer simple imprisonment for a period of one year. The fine amount paid by the petitioner shall be given to the de facto complainant as compensation.

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

RAJA ELANGO, J

July 27, 2016.
KTL