

THE HON' BLE SRI JUSTICE RAJA ELANGO

CrI.R.C.M.P.No.3785 of 2016
IN/AND
CRIMINAL REVISION CASE No.823 of 2008

ORDER:

The above Criminal Revision Case is filed by the petitioners-accused Nos.1, 2 & 5 against judgment, dated 10.06.2008, passed in CrI.A. No.97 of 2005 by the IX Additional Sessions Judge, (FTC), Guntur, confirming the conviction and sentence imposed by the Special Mobile Magistrate, Guntur, in C.C.No.127 of 2001, vide judgment, dated 04.02.2005, wherein the learned Magistrate found the petitioners guilty of the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced A2, A4 and A5 to suffer simple imprisonment for three months each and also to pay a fine of Rs.5,000/- each, in default to suffer simple imprisonment for one month each. The trial Court also convicted A1, represented by A2, to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for one month.

The case of the prosecution in brief is as follows:

Accused Nos.2 to 5, who are members of same family, are the partners of Accused No.1's company i.e. Kwalitiy Oil Traders. They borrowed a sum of Rs.1,50,000/- from the de facto complainant on 30.03.1998. A2 executed a promissory note on behalf of A1 firm and on repeated demands by the de facto complainant A2 issued a cheque. When the de facto complainant deposited the said cheque in his bank, it was dishonoured due to insufficient funds. Thereafter, the de facto complainant got issued a legal notice to the accused, but the accused did not repay the amount. Hence, the de facto complainant filed a complaint for the offence under Section 138 of NI Act.

The case was taken on file for the offence under Section 138 of NI Act. During the pendency of the case, Accused No.3 died. Therefore, case against A3 was dismissed as abated. On appearance of accused Nos.1, 2, 4 & 5, the charge under Section 138 of the NI Act was read over and explained to them, for which, they pleaded not guilty and claimed to be tried.

To substantiate its case, the prosecution examined PWs.1 to 3 and got marked Exs.P1 to P6 and also MO.1. On behalf of the accused, DW.1 was examined and Exs.D1 to D8 were marked.

The trial Court, after considering the evidence on record, found the petitioners – accused guilty of the offence under Section 138 of the NI Act, and accordingly, convicted and sentenced them as stated above. Challenging the same, the petitioners preferred appeal in Crl.A. No.97 of 2005 before the IX Additional Sessions Judge, (FTC), Guntur, and the learned Sessions Judge dismissed the appeal by confirming the judgment of the trial Court, vide judgment impugned. Against the said judgment, this revision is filed.

When this matter has come up for hearing, the above Crl.R.C.M.P. is filed by the petitioners and the de facto complainant seeking permission to compound the case. The de facto complainant filed an affidavit, stating that the matter was settled before the elders and therefore, he decided to withdraw the case against the petitioners. The petitioners and the de facto complainant, who appeared before this Court, submitted through their respective Counsel that they have entered into a compromise and therefore, the compromise may be recorded and the petitioners may be acquitted for the offence under Section 138 of the NI Act.

In the light of the facts and circumstances involved in the present case and particularly in view of the settlement arrived at between the parties in the present case, this Court is of the view that as the parties to the dispute settled the issues amicably, it is a fit case wherein the conviction and sentence imposed by the trial Court, as confirmed by the lower appellate Court, on the petitioners - accused can be set aside.

In the result, the Crl.R.C.M.P.No.3785 of 2016 is ordered and the Criminal Revision Case is allowed setting aside the conviction and the sentence imposed against the petitioners for the offence under Section 138 of the Negotiable Instruments Act, by the Special Mobile Magistrate, Guntur, in C.C.No.127 of 2001, vide judgment, dated 04.02.2005, as confirmed by the IX Additional Sessions Judge, (FTC), Guntur, in Crl.A. No.97 of 2006 vide judgment, dated 10.06.2005. Consequently, the petitioners - accused are acquitted for the offence under Section 138 of the Negotiable Instruments Act. The fine amount, paid if any, shall be refunded to them. Bail bonds shall stand cancelled and the sureties are discharged.

Miscellaneous petitions, pending if any, shall stand closed.

RAJA ELANGO, J

September 27, 2016.

KTL