

THE HON' BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.77 of 2005

ORDER:

This Criminal Revision Case is preferred by the petitioner-accused against judgment, dated 05.01.2005, passed in CrI.A.No.72 of 2004 by the Principal Sessions Judge, Kadapa, whereby the learned Sessions Judge confirmed the conviction and sentence imposed by the I-Additional Judicial Magistrate of First Class, Kadapa, in CC No.347 of 2002 vide Judgment, dated 12.07.2004.

The case of the prosecution is as follows:

The petitioner-accused borrowed a sum of Rs.1,50,000/- from the 2nd respondent – de facto complainant on one occasion by way of three cheques and another Rs.1,50,000/- on another occasion by way of another cheque. When the 2nd respondent demanded to repay the said amount, the petitioner gave four cheques. When the 2nd respondent presented the cheques in his bank, the same were returned with an endorsement that the account was closed. Thereafter, the 2nd respondent got issued a legal notice to the petitioner and even after receiving the same, the petitioner did not give any reply. Hence, the 2nd respondent filed the present complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act (for short 'NI Act').

The trial Court took cognizance of the case against the petitioner for the offence under Section 138 of NI Act. On appearance of the accused, the offence 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 prove its case, prosecution examined PWs.1 and 2 and marked Exs.P.1 to P.14. After closure of the prosecution evidence, the petitioner was examined under Section 313 Cr.P.C., and he denied the incriminating material against him. No oral or documentary evidence was adduced on behalf of the accused.

On appreciation of oral and documentary evidence, the trial Court found the petitioner-accused guilty of the offence under Section 138 of the Negotiable Instruments Act, and accordingly convicted and sentenced him to suffer simple imprisonment for four (4) months and also directed him to pay compensation of Rs.1,00,000/- to the 2nd respondent. Aggrieved by the same, the petitioner preferred appeal in CrI.A. No.72 of 2004 before the Principal Sessions Judge, Kadapa. The learned Sessions Judge, after re-appreciation of the evidence, dismissed the appeal by confirming the conviction and sentence passed by the trial Court. Challenging the same, the present revision is preferred by the petitioner.

Heard and perused the entire material available on record.

After perusing the entire material available on record and also the judgments of the Courts below, this Court of the view that there are no valid reasons to interfere with the judgments of the Courts below in convicting the petitioner for the offence under Section 138 of NI Act.

When this Court pointed out that there are no merits in the revision, learned counsel for the petitioner – accused restricted his arguments to the quantum of sentence, and requested that a lenient

view may be taken while imposing sentence since the petitioner was in prison for a substantial period.

Considering the facts and circumstances of the case and also taking into consideration the submissions of the learned counsel for the petitioner, this Court is inclined to pass the following order:

The conviction recorded by the I-Additional Judicial Magistrate of First Class, Kadapa, vide judgment, dated 12.07.2004, in CC No.347 of 2002, as confirmed by the Principal Sessions Judge, Kadapa, vide judgment, dated 05.01.2005, in CrI.A. No.72 of 2004, for the offence under Section 138 of the Negotiable Instruments Act, is hereby confirmed. However, the sentence of imprisonment imposed by the trial Court, as confirmed by the appellate Court, against the petitioner under the above head, is modified and reduced to the period which the petitioner has already undergone. However, the compensation amount, which was directed to be paid by the petitioner, by the trial Court, is not interfered with.

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

RAJA ELANGO, J

August 22, 2016.
KTL