

THE HON'BLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.2136 of 2004

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 22.12.2004, passed in CrI.A. No.81 of 2003 by the I-Additional Sessions Judge, Karimnagar, whereby the learned Sessions Judge partly allowed the appeal by confirming the conviction against the petitioner and reduced the fine amount from Rs.1,25,000/- to Rs.10,000/- as imposed by the Special Judicial Magistrate of First Class (Excise), Karimnagar, vide Judgment, dated 17.06.2003, passed in CC No.161 of 2003, wherein the learned Magistrate found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to undergo rigorous imprisonment for a period of six months and to pay an amount of Rs.1,25,000/- as compensation to the complainant.

The case of the prosecution is that the petitioner borrowed an amount of Rs.3,67,000/- from the de facto complainant in the month of January 1999 and repaid an amount of Rs.1,00,000/- in the month of November 1999 and thereafter again he took an amount of Rs.25,000/- and Rs.8,000/- on different occasions and executed a stamped document for repayment of Rs.3,00,000/- on or before 31.10.2000. He also issued three cheques for Rs.1,00,000/- each in favour of the complainant. Subsequently, the accused repaid Rs.2,00,000/- and received two cheques from the de facto complainant. But, he failed to repay the remaining amount of Rs.1,00,000/- even though the de facto complainant made

demands. Therefore, the de facto complainant deposited the cheque in his bank for collection, but the same was dishonoured with an endorsement 'referred to drawer.' Thereafter, the complainant issued a notice to the petitioner and the petitioner issued reply contending that he discharged the entire amount. Therefore, the de facto 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. On appearance of petitioner, 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 to 3 and got marked Exs.P-1 to P-7. On behalf of the petitioner, DWs.1 and 2 were examined and Ex.D1 was marked.

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 CrI.A. No.81 of 2003 before the I- Additional Sessions Judge, Karimnagar, and the learned Sessions Judge partly allowed the appeal by confirming the conviction and sentence of imprisonment recorded by trial Court and reducing the compensation amount from Rs.1,25,000/- to Rs.10,000/- vide judgement impugned.

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 restricted his arguments to the quantum of sentence by submitting that the petitioner has to look after his family and prayed that leniency may be shown while imposing sentence.

Considering the facts and circumstances of the case and also considering that the case pertains to the year 2002, the sentence of imprisonment imposed against the petitioner by the trial Court, as confirmed by the lower appellate Court, can be set aside by imposing additional fine amount on the petitioner.

In the result, the conviction recorded by the Special Judicial Magistrate of First Class, (Excise), Karimnagar, in CC No.161 of 2002 vide judgment, dated 17.06.2003, as confirmed by the I-Additional Sessions Judge, Karimnagar in CrI.A. No.81 of 2003, vide judgment, dated 22.12.2004, for the offence under Section 138 of the Negotiable Instruments Act, is confirmed. However, the sentence of imprisonment imposed by the trial Court, as confirmed by the appellate Court, against the petitioner for the above offence is set aside and the petitioner is sentenced to pay an additional fine of Rs.20,000/- on or before 01.10.2016 and same shall be give 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 25, 2016.

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