

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.90 OF 2008

ORDER:

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This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioners/appellants/accused challenging the judgment, dated 28.1.2008, in Criminal Appeal No.182 of 2007 on the file of the Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, Hyderabad whereunder and whereby, the learned Sessions Judge dismissed the appeal filed by the petitioners against the judgment, dated 6.11.2007, in C.C.No.1504 of 2005 on the file of the III Metropolitan Magistrate, Cyberabad at L.B.Nagar.

2. Respondent No.1 herein is the complainant and the petitioners herein are the accused. Originally, respondent No.1 filed a private complaint against the petitioners before the III Metropolitan Magistrate, Cyberabad at L.B.Nagar and the same was taken on file against the petitioners for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and numbered as C.C.No.1504 of 2005.

3. The brief facts of the case are as follows:

The complainant is a manufacturing unit of fan covers and general castings situated at Yamnampet Village, Ghatkesar Mandal. A-2 is the proprietor of A-1 and he is the supplier of pig iron and cast iron scraps. The accused used to supply the above raw material to the complainant. The complainant has given an oral order to the accused for the supply of said raw material and sent two demand drafts i.e., one for Rs.2,90,000/- dated 21.12.2002 and another for Rs.1,25,250/- dated 23.12.2002 totaling a sum of Rs.4,15,000/-. The accused has encashed the said demand drafts and supplied the raw material worth

Rs.1,85,000/- only and gave an undertaking to supply the raw material to the complainant in the month of February, 2004. The complainant requested the accused either to supply the raw material or to return the balance amount of Rs.2,30,000/-, but the accused postponed on some pretext or the other. On 5.7.2004, the accused issued a cheque bearing No.240270 dated 15.10.2004 drawn on A.P.Vardhaman (Mahila) Co-operative Urban Bank Limited, Balanagar Branch for a sum of Rs.2,30,000/- and requested to present the same on 15.10.2004 by which time, he will make arrangement for honouring the said cheque. To that effect, he has given an undertaking letter on 5.7.2004. The complainant presented the said cheque with her banker namely Union Bank of India, Ghatkesar Branch on 15.10.2004, but the said cheque was dishonoured on the ground of insufficient funds. As the accused intentionally and deliberately issued cheque without having sufficient funds, A-1 and A-2 are liable for punishment under Section 138 of the Negotiable Instruments Act.

4. Basing on the sworn statement of the complainant, cognizance was taken against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act.

5. On appearance of the accused, copies of the documents relied upon by the complainant have been furnished to him under Section 207 Cr.P.C.

6. When examined under Section 251 Cr.P.C., the accused denied the complaint allegations and pleaded not guilty and claimed to be tried.

7. On behalf of the complainant, P.Ws.1 to 3 were examined and Exs.P-1 to P-7 were got marked.

8. After closure of the complainant's evidence, the accused was

examined under Section 313 Cr.P.C. for which he denied the incriminating substances found against him in the evidence of the complainant. On behalf of the accused, D.W.1 was examined and Exs.D-1 to D-10 were got marked.

9. After due trial, the learned Magistrate found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and accordingly, convicted and sentenced him to undergo simple imprisonment for a period of six months and to pay the cheque amount in Ex.P-1, which is original cheque for Rs.2,30,000/-, towards compensation to the complainant. Aggrieved thereby, the accused preferred the aforementioned appeal and the same was dismissed by the learned Sessions Judge confirming the judgment of the trial Court on the ground that the trial Court has not committed any error. Challenging the said judgment, the accused filed this Criminal Revision Case.

10. While arguing the matter, learned counsel for the petitioners confined his arguments only to the extent of the question of sentence and informed that the petitioners have already deposited an amount of Rs.1,00,000/- before the trial Court on 31.12.2007 and an amount of Rs.85,000/- in two instalments during the pendency of the present Revision Case; that the petitioners are ready to pay the balance of the cheque amount and hence, prayed to set aside the sentence of imprisonment imposed by the trial Court, which was confirmed by the first appellate Court.

11. Basing on the concurrent findings of the Courts below, the petitioners were rightly convicted and hence, this Court is not inclined to interfere with the conviction imposed by the Courts below. However, considering the facts and circumstances of the case and the submission of the learned counsel for the petitioners, the sentence of imprisonment is set aside.

12. In the result, the conviction imposed against the petitioners in the judgment, dated 28.1.2008, in Criminal Appeal No.182 of 2007 on the file of the Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, Hyderabad for the offence punishable under Section 138 of the Negotiable Instruments Act is confirmed. However, the sentence of imprisonment imposed by the trial Court and confirmed by the first appellate Court for the said offence is set aside, while maintaining the compensation amount of Rs.2,30,000/-. As recorded earlier, the petitioners have already paid Rs.1,00,000/- on 31.12.2007 before the trial Court and Rs.85,000/- in two instalments during the pendency of this Revision Case. Hence, the petitioners are directed to pay the remaining amount of Rs.45,000/- (Rupees forty five thousand only) on or before 30.9.2016 as compensation and on failure to pay the said amount, the petitioners shall undergo simple imprisonment for a period of three (3) months. The complainant is entitled to withdraw Rs.1,00,000/-, which was deposited before the trial Court on 31.12.2007, from the trial Court and also the amount of Rs.45,000/-, if deposited by the petitioners before the trial Court.

13. Accordingly, this Criminal Revision Case is partly allowed.

14. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

JUSTICE RAJA ELANGO

23.8.2016
AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

Date: 23.8.2016

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