

THE HON'BLE SRI JUSTICE RAJA ELANGO
CRIMINAL REVISION CASE No.1618 of 2007

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 01.07.2008, passed in CrI.A. No.130 of 2006 by the IV Additional District & Sessions Judge, Warangal, whereby the learned Sessions Judge dismissed the appeal by confirming the Judgment, dated 07.11.2006, passed in CC No.234 of 2000 by the III Additional Junior Civil Judge, Warangal, whereby the learned Magistrate found the petitioner - 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 six months.

The case of the prosecution is that the petitioner – accused and the de facto complainant are friends and on such intimacy, the accused borrowed an amount of Rs.1,40,000/- from the de facto complainant by agreeing to repay the same with an interest of 24%p.a. and in pursuance of the same, the petitioner executed a promissory note for collateral purpose. On demand of the de facto complainant to repay the said amount, the petitioner issued a cheque to the de facto complainant. When the said cheque was deposited in the bank by the de facto complainant, the same was dishonoured on the ground “funds insufficient.” On the request of the petitioner, the complainant presented the said cheque again two times, but the cheque was returned on the same ground. Hence, the de facto complainant issued a

registered legal notice to the petitioner. Even after receipt of the said notice, the petitioner failed to repay the amount due to the de facto complainant. 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. 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 to 4 and got marked Exs.P1 to P15. On behalf of the accused, DWs.1 and 2 were examined and Exs.D1 to D3 were marked.

The trial Court, after considering the evidence on record, found the petitioner guilty of the offence under Section 138 of the NI Act, and accordingly, convicted and sentenced him as stated above. Challenging the same, the petitioner preferred appeal in CrI.A. No.130 of 2006 before the IV Additional District & Sessions Judge, Warangal, and the learned Sessions Judge 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 restricted his arguments to the quantum of sentence and submitted that the petitioner is ready to pay Rs.1,00,000/- to the de facto complainant, in discharge of the above debt, and requested 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 2000, the sentence of imprisonment imposed 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 against the petitioner by the III Additional Judicial Magistrate of First Class, Warangal, in CC No.234 of 2000 vide judgment, dated 07.11.2006, as confirmed by the IV Additional Metropolitan Sessions Judge, Warangal, in CrI.A. No.130 of 2006, vide judgment, dated 23.11.2007, for the offence under Section 138 of the Negotiable Instruments Act, is confirmed. However, the sentence of imprisonment imposed by the trial Court for the above offence against the petitioner, as confirmed by the appellate Court, is set aside and the petitioner is sentenced to pay an additional fine of Rs.1,00,000/- and the same shall be given to the de facto complainant as compensation.

At this stage, learned counsel for the petitioner submitted that the petitioner is ready to pay the said fine amount to the de facto complainant no itself and he may be permitted to do so. The de facto complainant is also present before the Court. Therefore, the petitioner is permitted to pay the additional fine amount of Rs.1,00,000/- to the de

facto complainant and accordingly, the petitioner paid the amount to the de facto complainant.

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

September 27, 2016.
KTL

RAJA ELANGO, J

