

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1349 OF 2007

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner/appellant/accused challenging the judgment, dated 3.10.2007, in Criminal Appeal No.94 of 2006 on the file of the Principal Sessions Judge at Khammam whereunder and whereby, the learned Sessions Judge dismissed the appeal filed by the petitioner against the judgment, dated 1.12.2006, in C.C.No.66 of 2005 on the file of the I Additional Judicial Magistrate of First Class, Khammam.

2. Respondent No.2 herein is the complainant and the petitioner herein is the accused. Respondent No.2 filed a private complaint against the petitioner before the I Additional Judicial Magistrate of First Class, Khammam for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and the same was numbered as C.C.No.66 of 2005.

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

The accused borrowed an amount of Rs.90,000/- from the complainant on 10.1.2004 for his family necessities and agreed to repay the same with interest @ 24% per annum and accordingly, he executed a promissory note in his favour. On demands made by the complainant, the accused issued a cheque bearing No.235943, dated 17.11.2004, for Rs.90,000/- drawn on State Bank of India, Khammam in favour of the complainant towards

part satisfaction of the amount under the promissory note. The complainant presented the said cheque with his banker – Andhra Bank, Khammam for collection, but the same was returned with an endorsement “funds insufficient”. As the accused issued the cheque knowing fully well that there were insufficient funds in order to defraud and deceive the complainant, he got issued a legal notice on 30.11.2004 to the accused calling upon him to pay the cheque amount, but the same was returned unserved and he did not choose to pay the due amount. As there was no hope of recovery of the cheque amount, the complainant approached the Court by way of a private complaint.

4. On appearance of the accused, he was furnished with copies under Section 207 Cr.P.C. and he was examined under Section 251 Cr.P.C. for which, he pleaded not guilty and claimed to be tried.

5. During the course of trial, on behalf of the complainant, P.Ws.1 and 2 were examined and after closure of prosecution side evidence, the accused was examined under Section 313 Cr.P.C. for which, he denied the incriminating evidence.

6. On behalf of the accused, no witnesses were examined and no documents were marked.

7. 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 one year and directed him to pay an amount of Rs.1,00,000/- to the

complainant by way of compensation, as provided under Section 357(3) Cr.P.C., within one month from the date of judgment and in default, to undergo simple imprisonment for a period of three months. 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.

8. While arguing the matter, learned counsel for the petitioner confined his arguments only to the extent of the question of sentence and submitted that the petitioner is suffering from health problems and hence, prayed to set aside the sentence of imprisonment imposed by the trial Court, which was confirmed by the first appellate Court.

9. Basing on the concurrent findings of the Courts below, the petitioner was 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 petitioner, the sentence of imprisonment is set aside.

10. In the result, the conviction imposed against the petitioner in the judgment, dated 3.10.2007, in Criminal Appeal No.94 of 2006 on the file of the Principal Sessions Judge at Khammam 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.1,00,000/-. The petitioner is directed to pay the said amount to respondent No.2 on or before 30.11.2016 and in default, he shall undergo rigorous imprisonment for a period of three (3) months.

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

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

22.9.2016
AMD

JUSTICE RAJA ELANGO

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Date: 22.9.2016

AMD