

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.348 of 2006

ORDER:

The present Criminal Revision Case is taken up for disposal on merits for the reason that when it was called on 1.11.2017 there was no representation, and, therefore, Registry was directed to list under the caption 'For Orders'.

2. Today also, in the forenoon session when called at 10.45 a.m., there was no representation for the petitioner/complainant. Again, when it is called in the afternoon session, there is no representation.

3. In an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'N.I. Act'), on the complaint of the revision petitioner herein, C.C. No.3004 of 2003 was tried by the XIV-Additional Chief Metropolitan Magistrate, Hyderabad. The 1st respondent contested the offence. The learned Magistrate examined the revision petitioner as P.W.1. On behalf of the 1st respondent, one Haripal was examined as D.W.2, whereas himself was examined as D.W.1. On behalf of the revision petitioner, Exs.P1 to P13 were marked. Last two of the documents are the copy of Complaint in O.S. No.4764 of 2003 on the file of IV-Junior Civil Judge, City Civil Court, Hyderabad, and copy of affidavit filed by D.W.1 in temporary injunction application in the said suit.

4. On appraisal of evidence, the learned Magistrate recorded conviction under Section 255 (2) of Cr.P.C. for the offence punishable under Section 138 of N.I. Act and inflicted sentence of simple imprisonment for three months, and also sentenced the 1st respondent to pay fine of Rs.10,000/-.

5. The facts would show that the 1st respondent borrowed a sum of Rs.1,10,000/- from the complainant promising to repay it within a year, but failed to repay the same. On the other hand, issued 11 cheques for Rs.10,000/- each requesting the revision petitioner to present each cheque every month starting from September, 2002, and that the initial four cheques were honoured, but in January, 2003, the respondent approached the complainant requesting not to present the cheques and promised explaining his financial crisis and failed to pay the entire balance. The cheques were returned on 11.7.2003 and 28.7.2003 when they were presented with endorsement 'insufficient funds' and legal notice was issued. The respondent, having received it, issued reply with all incorrect allegations. That is how the trial commenced and concluded with the conviction and imposition of sentence of imprisonment besides ordered to pay fine amount as mentioned in the above.

6. On the ground that the sentence of imprisonment inflicted and fine imposed was wholly inadequate, the present Criminal Revision Case is preferred.

7. Since the learned counsel for the petitioner is not present, the grounds, which are projected can be looked into to dispose of on merits.

8. What all the petitioner agitated is the learned Magistrate ought to have punished the respondent severely as provided under N.I. Act and the sentence of imposition fine of Rs.10,000/- is flea-bite, and the learned Magistrate ought to have directed the respondent to pay cheque amount having found him guilty and even imposing sentence of imprisonment for two years. These have been the grounds agitated.

9. It is no doubt true there is no bar in approaching the Court for enhancement of sentence of imprisonment or fine imposed, but the question is what are the factors that are available to the petitioner basing on which enhancement of sentence can be justified. Admittedly, the amounts covered by cheques, perhaps on two cheques, as he refers to the dates i.e., 11.7.2003 and 28.7.2003, are Rs.10,000/- each. It appears that three dishonoured cheques were available with the revision petitioner. The complainant's case is that the first four cheques issued by the respondent/accused were honoured.

10. In such circumstances, more particularly, in the absence of anything on record and in the Grounds of appeal whether the 1st respondent preferred any appeal questioning conviction and sentence of imprisonment and fine ordered to be paid by him, it cannot be

construed that three months simple imprisonment inflicted on him as a flea-bite sentence besides imposing fine of Rs.10,000/- ordered to be paid. Thus, whole grievance of the petitioner appears to be that the learned Magistrate has not ordered the balance amount covered by the cheques dishonoured and the cheques which were not presented. That appears to be the grievance for which he has got separate forum for redressal.

11. Therefore, there is no merit in the Criminal Revision Case, and, accordingly, the same is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

Dt.02.11.2017
gbs

A. SHANKAR NARAYANA

