

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.22 of 2006

ORDER:

The present Criminal Revision Case is preferred by the complainant questioning the judgment dated 24.12.2001 in Criminal Appeal No.225 of 2000 rendered by the I-Additional Sessions Judge, Guntur, whereby and whereunder, the learned Sessions Judge, as the appellate authority, while confirming the conviction passed against respondent No.1 herein for the offence punishable under Section 138 of the Negotiable Instruments Act (for short, 'the Act'), set aside the sentence of Simple Imprisonment for six months inflicted by the learned VII Additional Judicial First Class Magistrate, Guntur, in C.C.No.213 of 1999, but, however, confirmed the fine amount of Rs.5,000/- with default sentence.

Heard Sri T.Rajendra Prasad, learned counsel for the revision petitioner – complainant. No representation for respondent No.1 – accused.

Learned counsel for the revision petitioner would submit that the lower appellate court went wrong in setting aside the sentence of imprisonment by taking a lenient view having come to the conclusion that the accused is guilty of offence punishable under Section 138 of the Act, despite the fact that the sentence imposed by the trial Court is reasonable.

The learned Magistrate, referring to the facts, that being the accused borrowed Rs.4,00,000/- from the complainant on 01.06.1995 agreeing to repay the same with interest at 25% per annum and thereafter issued cheque for Rs.2,00,000/- drawn on State Bank of Hyderabad, Vijayawada, which was dishonoured for want of funds, and thereupon, the complainant got issued notice, dated 08.10.1997, to the accused, besides sending telegram on the very same day calling for discharge of the debt, and the accused avoided to receive the registered notice and, then, having appraised the evidence of PWs.1 to 3 and Exs.P1 to P9 let in by the complainant and DWs.1 and 2 and Exs.B1 to B5 let in by the accused, held that the mandatory requirements to prove the offence punishable under Section 138 of the Act have been established by the complainant. Further, the learned Magistrate, elaborately discussing the evidence on record and discarding the documentary evidence marked as Exs.B1 to B3 and also the evidence of DWs.1 and 2, held that the complainant proved the offence beyond all reasonable doubt and, accordingly, convicted the accused and inflicted the sentence of Simple Imprisonment for six months, besides imposing fine of Rs.5,000/- with default sentence. On appeal, the lower appellate Judge has taken a lenient view, perhaps what weighed with him appears to be the accused is a female, which is, of course, not explicit from the judgment and, thereby, set aside the sentence of imprisonment opining that it would meet the ends of justice. In fact, it is the discretion which the learned lower appellate court has exercised in setting aside the imprisonment alone, but,

however, the conviction and sentence of fine were confirmed. The present revision case relates to the year 2006 and, at this distance of time, remitting the matter to the lower appellate court appears to be not desirable.

Thus, holding that there is no merit, the present revision case is dismissed confirming the judgment passed by the lower appellate court.

Miscellaneous applications, if any pending in the revision case stand closed.

13.11.2017
v v



JUSTICE A.SHANKAR NARAYANA