

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2239 OF 2017

ORDER:

The present Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is preferred by the appellant in Criminal Appeal No.54 of 2012 on the file of learned X Additional District and Sessions Judge, Tirupati, aggrieved over the judgment, dated 30.06.2017, rendered in the aforesaid Criminal Appeal, whereby and whereunder, the learned Sessions Judge confirmed the conviction recorded for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') and the fine amount imposed by the learned Judicial Magistrate of First Class, Tirupati, by judgment, dated 07.02.2012, rendered in S.T.C.No.132 of 2011, but, however, modified the sentence of simple imprisonment of one year inflicted on the revision petitioner to that of simple imprisonment of six months.

2. Heard Sri D. Kodanda Rami Reddy, learned counsel for the revision petitioner.

3. Learned counsel for the revision petitioner, ofcourse, has not made any submission, worth the name, but, however, pleaded that the revision petitioner has been serving out the sentence from 02.08.2017 and, therefore, earnestly makes a request to modify the sentence of imprisonment to that of the period already undergone.

4. Perused the judgments rendered by the Courts below.

5. The learned Magistrate, in fact, referred to the provisions of Section 68 of the Indian Evidence Act as to the proof of execution of the document Ex.P1 – registered simple mortgage deed, dated 20.11.2007. The learned Magistrate, further referring to certain authorities mentioned in paragraph Nos.23 to 26, arrived at the findings that the mandatory requirements have been complied with and the evidence of PW.1 and the recitals in Exs.P1 to P6 would prove that the cheque was issued in relation to legally enforceable debt and the mandatory requirement of service of notice was also complied with and thereby, holding that respondent No.2 - complainant could prove the offence under Section 138 of the Act, convicted and sentenced the revision petitioner to imprisonment as stated above.

6. The learned Sessions Judge, referring to the decisions relied on by the learned counsel appearing for the revision petitioner in paragraph No.40, numbering about eight, and also answering the submissions of the learned counsel, on re-appraisal of evidence, while upholding the conviction recorded and fine amount imposed, however, modified the sentence of simple imprisonment of one year to that of six months simple imprisonment.

7. One circumstance that surfaces is that the cheque amount was not granted by way of compensation and only fine is imposed,

though, the provisions of Section 138 of the Act permits granting double the cheque amount. Further, the simple imprisonment of one year inflicted on the revision petitioner by the learned trial Court is already reduced to six months by the learned lower appellate Court. Therefore, any reduction in the sentence of imprisonment by way of modification may amount to inflicting a flea-bite sentence, as declared by the Honourable Apex Court in **Suganthi Suresh Kumar v. Jagdeeshan**¹.

8. Therefore, there is no merit in the present Criminal Revision Case, as the findings recorded by the Courts below cannot be faulted, since, they do not suffer from any legal infirmity nor any patent illegality is projected.

9. Therefore, the Criminal Revision Case is dismissed confirming the conviction recorded and fine amount imposed by the learned trial Court and the modified sentence of imprisonment inflicted by the learned lower appellate Court on the revision petitioner.

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

A. SHANKAR NARAYANA, J

December 27, 2017
MD

¹ (2002) 2 SCC 420