

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL REVISION CASE No.1244 of 2006

ORDER :

This Criminal Revision Case is filed by the petitioner / accused, aggrieved by the judgment dated 19.07.2006 in Criminal Appeal No. 124 of 2005 passed by the learned II Additional District & Sessions Judge (F.T.C), Medak at Sanga Reddy, confirming the judgment dated 13.09.2005 in C.C. No. 363 of 2002 passed by the learned Judicial First Class Magistrate, Zaheerabad, convicting the petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the N.I.Act') and sentence imposed to suffer simple imprisonment for six months and pay a fine of Rs.5,000/- and in default to pay the fine amount, he shall suffer further simple imprisonment for three months.

2. The factual matrix of the case is that the respondent / complainant filed C.C. No. 363 of 2002, alleging that he gave a hand loan of Rs.78,900/- to the accused for meeting his family necessities and in discharge of the said hand loan, the accused issued a cheque bearing No. 772098 for Rs.78,900/- dated 06.12.2001 drawn on Manjeera Gramina Bank, Zaheerabad and on presentation of said cheque on 17.04.2002, the same was dishonoured by the aforesaid bank with a memo that the cheque was returned due to insufficient funds. After following due procedure contemplated under Section 138 of the N.I.Act the complainant filed C.C. No.363 of 2002. The defence of accused is denial of issuance of the cheque. The case of the accused was that he along with the complainant and others were partners in M/s..Vijayalaxmi Finance Corporation, Zaheerabad and the said Finance Corporation became defunct and that he borrowed the

hand loans of Rs.2,20,000/- and Rs.78,900/- from the complainant. However, he did not issue Ex.P1-Cheque to the complainant but, the complainant has forcibly obtained the same from him. The trial Court and the lower appellate court did not believe the defence version of the accused and on the other hand having taken into consideration the oral and documentary evidence of the complainant they came to the conclusion that the accused issued Ex.P1 cheque towards discharge of legally enforceable debt and accordingly convicted and sentenced him as stated supra. Hence, this criminal revision case.

3. When the matter came up for hearing, learned counsel for the petitioner would submit that the petitioner is financially hard pressed and at present he is not having any avocation and his family is depending on him financially and considering his plight, the sentence imposed by the Court below may be modified.

4. Learned counsel for the respondent / complainant left the matter to the discretion of the Court.

5. Having taken into consideration the above respective submissions, while sustaining the conviction passed by the trial Court, the sentence imposed by the trial Court and confirmed by the lower appellate court is modified to the extent that the petitioner / accused is directed to pay a fine of Rs.78,900/- (Rupees Seventy Eight Thousand and Nine Hundred only) within six weeks from the date of this order . In the event of such deposit of the fine amount, the same shall be paid as compensation to the respondent / complainant under Section 357 (3) Cr.P.C. If the fine amount imposed by the trial Court is already deposited, the same shall be given set off from the fine now imposed.

6. Accordingly, this Criminal Revision Case is allowed to the extent as mentioned above.

As a sequel, miscellaneous petitions if any pending shall stand closed.

JUSTICE U. DURGA PRASAD RAO

Dated: 29.10.2018

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