

THE HONOURABLE SMT. JUSTICE P.SREE SUDHA

CRIMINAL REVISION CASE No.1280 of 2009

ORDER:

This Criminal Revision Case is filed against the Judgment and decree passed by the learned III-Additional Metropolitan Sessions Judge, Hyderabad in CrI.A.No.96 of 2009 dated 27.07.2009 in confirming the Judgment and decree passed by the learned X-Additional Chief Metropolitan Magistrate at Secunderabad in C.C.No.684 of 2004 dated 23.03.2009.

2. Today when the matter came up for hearing, there is no representation on behalf of the learned Counsel for the revision petitioner and he did not evince any interest in continuing the revision. Perusal of the record shows that plaintiff gave complaint against accused under Section 138 of Negotiable Instruments Act stating that accused is the Proprietor and owner of M/s. Sri Salamath Rythu Centre at Udayagiri and he was appointed as dealer of the complainant company to sell fertilizer products. The accused used to make purchases by placing orders from time to time under various invoices on credit basis. When he asked to clear the outstanding dues on 31.10.2003, he executed an undertaking that he will pay

demand amount in installments and he also issued two cheques one dated 13.05.2004 for Rs.28,37,726/- and another dated 18.05.2004 for Rs.20,00,000/- and both cheques were drawn by him at Andhra Bank, Stonehousepet Branch, Nellore. When they were present, the same were dishonored with an endorsement "Insufficient Funds", as such statutory notice was issued but the accused did not responded, as such complainant filed complaint under Section 138 of N.I Act.

3. Complainant was examined as P.W.1. He also examined another witness P.W.2 and marked Exs.P1 to P21 on his behalf. Accused did not examine anyone on his behalf.

4. The trial Court considering the evidence on record, found accused guilty for the offence under Section 138 of N.I Act and also convicted under Section 255(2) of Cr.P.C and sentenced to undergo Simple Imprisonment for a period of six months and also to pay a fine of Rs.5,000/- and in default of payment of fine amount, he has to suffer S.I for a period of 15 days. Against which the accused preferred an appeal, but the appellate Court by Judgment dated 27.07.2009 dismissed the same confirming the Judgment of the trial Court. Aggrieved by the same, the present Criminal Revision Case is preferred.

5. The appellant mainly contended that complaint is not maintainable as the General Power of Attorney Holder is not competent to prosecute the case. The Ex.P6 i.e, Statement of Account is a computer generated copy admissible in evidence and hit by Section 34 of the Indian Evidence Act. There is no evidence on record to show that it was legally enforceable debt. He further stated that Ex.P6 is not maintainable during the regular course of business. Ex.P9 and Ex.P13 Cheques were tampered and thus hit by Section 87 of the N.I Act. There is a material alternation in the account, as such they are invalidated. The evidence of P.W.2 cannot be relied upon as his evidence was brought into existence to fill up the lacunae. He also stated there is no evidence that Murugappa Group of Companies are taken over by the Godavari Fertilizers and Chemicals Ltd., and there is no proper service of notice as contemplated under Section 138 of N.I Act and requested the Court to set aside the Judgment of the trial Court, but the appellate Court considering all aspects confirmed the Judgment of the trial Court.

6. This Court finds no infirmity in the Judgment of the appellate Court in CrI.A.No.96 of 2009 dated 27.07.2009, confirming the Judgment of the trial Court in C.C.No.684 of

2004 dated 23.03.2009 and thus the present Criminal Revision Case is devoid of merits and is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.SREE SUDHA

DATED: 03.02.2023
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