

BAIL SLIP : The Petitioner/ Accused was directed to be released on bail by the order of the High Court dated.20-03-2013 in CrI.R.C.M.P.No.919 of 2013 in CrI.R.C No.591 of 2013.

[3299]

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL REVISION CASE NO: 591 OF 2013

Criminal Revision Case filed under Section 397 and 401 of Cr.PC against the Judgment dated 27.12.2012 made in CrI.A.No.135 of 2009 on the file of the Court of the IV Additional Sessions Judge (FTC) Khammam preferred against the Order dated 09.11.2009 made in C.C.No.214 of 2008 on the file of the Court of the III Additional Judicial Magistrate of First Class, Kothagudem Khammam District.

Between:

Nandulal Kori, S/o.Kishanlal Kori, R/o.H.No.6-9-88/3A, Safaibasti,
Kothagudem, Khammam Dist.

...Petitioner/Accused

AND

1. Nanda Kishore Ladda S/o.Harinarayana R/o.Ganesh Temple Area,
Kothagudem Town, Khammam Dist.
2. The State of A.P., rep. by its Public Prosecutor, High Court of A.P.,
Hyderabad.

... Complainant /Respondent

Counsel for the Petitioner : Sri S Madan Mohan Rao

Counsel for the Respondent No.1 : Sri K Rathanga Pani Reddy

**Counsel for the Respondent No.2 : Sri Vizarith Ali, Assistant
Public Prosecutor**

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE E. V. VENUGOPAL

CRIMINAL REVISION CASE No.591 OF 2013

ORDER:

This Criminal Revision Case is filed aggrieved by the judgment dated 27.12.2012 in CrI.A.No.135 of 2009 on the file of the learned IV Additional Sessions (FTC), Khammam (for short, "appellate Court") in confirming the judgment dated 09.11.2009 in C.C.No.214 of 2008 on the file of learned III Additional Magistrate of I Class, Kothagudem, Khammam District (for short, "trial Court").

2. The brief facts of the case are that the petitioner/accused borrowed a sum of Rs.1,00,000/- from the respondent No.1/complainant and executed promissory note on 17.02.2002 in his favour promising to repay the said amount with interest @ 24% p.a. Thereafter on persistent demands made by the respondent No.1/complainant, the petitioner/accused issued a cheque bearing No.0426998 for Rs.1,00,000/- on 03.11.2004 drawn on Vijaya Bank, Kothagudem Branch. On presentation, the said cheque was returned for the reason "funds insufficient". Therefore, respondent No.1 issued the legal notice on 11.11.2004 to the petitioner and the petitioner received the same on 17.11.2004 but failed to pay the cheque amount. Therefore, respondent No.1 filed a

complaint against the petitioner under Section 138 of the Negotiable Instruments Act (for short, "NI Act").

3. The trial Court *vide* judgment dated 09.11.2009 in C.C.No.214 of 2008 convicted the petitioner for the offence under Section 138 of NI Act and sentenced him to undergo simple imprisonment for a period of six (6) months and to pay fine of Rs.5,000/-. In default to suffer simple imprisonment for a period of one (1) month only. Aggrieved thereby, the petitioner preferred an Appeal.

4. The appellate Court *vide* judgment dated 27.12.2012 in Crl.A.No.135 of 2009 dismissed the appeal confirming the judgment passed by the trial Court. Assailing the same, the present Revision.

5. The trial Court, on behalf of respondent No.1 examined PWs.1 and 2 and marked Exs.P1 to P6. On behalf of defence, DW.1 was examined and no document was marked. The trial Court observed that PW.1 has issued Ex.P4 notice which was served under Ex.P5, so the mandatory provision was applied by Pw.1. When once the accused has denied the signature on Ex.P5 acknowledgment, the burden of onus shifts to the accused to establish that the signature on Ex.P5 does not belong to him. But the accused has failed to discharge his burden in establishing that the signature on Ex.P5 does not belong to him. Hence considering the facts and circumstances of

the case, nature of the offence and the admission of DW.1 in his cross examination that he has issued Ex.P1 and P6 in favour of PW.1 with his signature there on, PW.1 has established the case against the accused. The accused has committed the offence punishable under Section 138 of N.I.Act as it was issued to him without providing any fund in the bank for discharge of legally enforceable debt under Ex.P6. Hence, the trial Court was of the opinion that PW.1 has established the guilt of the accused beyond all reasonable doubt.

6. Heard Mr. S.Madan Mohan Rao, learned counsel for the petitioner, Mr.K. Ratanga Pani Reddy, learned counsel for the respondent No.1 and Mr. Vizarith Ali, learned Assistant Public Prosecutor appearing for the respondent No.2/State. Perused the record.

7. Learned counsel for the petitioner submitted that the Courts below erred in appreciating the oral and documentary evidence available on record in proper perspective and convicted the revision petitioner. Therefore, seeks to allow the Revision.

8. Learned Assistant Public Prosecutor as well as learned counsel for respondent No.1 contended that the trial Court as well as the appellate Court after careful scrutiny of the evidence available on record rightly passed the respective judgments and the interference

of this Court, at this stage is unwarranted. Therefore, seeks to dismiss the Revision.

9. A perusal of record shows that this Court vide order dated 20.03.2013 suspended the sentence imposed against the petitioner and enlarged him on bail on executing a bond for an amount of Rs.5,000/- with two sureties each of like sum to the satisfaction of the trial Court.

10. In the present case on hand, both the Courts have concurrently held that the petitioner was guilty of the offence under Section.138 of N.I.Act, which finding, in my considered view, does not call for interference, in exercise of revisional jurisdiction under Section 397 Cr.P.C.

11. Therefore, upon careful scrutiny of the oral and documentary evidence available on record, both the Courts below have appreciated the evidence available on record in right perspective and have come to just conclusion that the petitioner has committed the offence punishable under Section 138 of N.I. Act and that finding need not be interfered.

12. Having regard to the submissions made by both the learned counsel and upon considering the fact that the petitioner/accused suffered mental agony by roaming around trial

Court as well as appellate Court, this Court is inclined to take a lenient view by reducing sentence imposed on the petitioner to the period of imprisonment already undergone by him.

13. The petitioner/accused is directed to pay an amount of Rs.50,000/- out of which Rs.45,000/- to be paid to the respondent No.1/defacto-complainant and balance Rs.5,000/- to be paid to the State within a period of three (3) months from the date of receipt of a copy of the order. Upon such deposit, the defacto complainant is directed to withdraw the same with immediate effect.

14. In default, the judgment 09.11.2009 in C.C.No.214 of 2008 on the file of learned III Additional Magistrate of I Class, Kothagudem stands good in all respects.

15. With the above direction, the Criminal Revision Case is dismissed.

Pending miscellaneous applications, if any, shall stand closed.

SD/- B SATYAVATHI,
DEPUTY REGISTRAR.

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SECTION OFFICER

To,

1. The IV Additional Sessions Judge (FTC) Khammam
2. The III Additional Judicial Magistrate of First Class, Kothagudem Khammam District
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad [OUT]
4. One CC to Sri S Madan Mohan Rao, Advocate [OPUC]
5. One CC to Sri K Rathanga Pani Reddy, Advocate [OPUC]
6. Two CD Copies
7. The Superintendent, District Jail, Khammam.

ADK

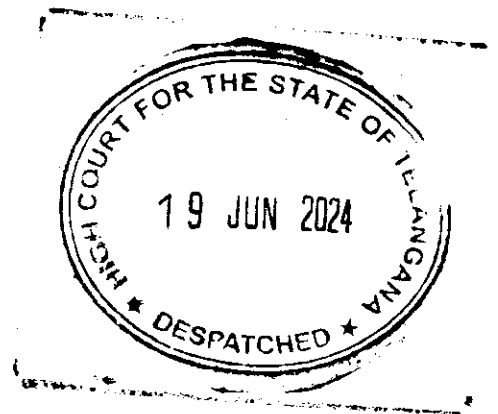
19

HIGH COURT

DATED:18/03/2024

ORDER

CRLRC.No.591 of 2013



DISMISSING THE CRLRC

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