NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2337 OF 2009
(Arising out of Special Leave Petition (Crl.) No. 3860 OF 2009)

BASAVARAJ ....**APPELLANT(S)**

VERSUS

M/S. DHANLAXMI FINANCE CO. (R) TERDAL ....**RESPONDENT(S)**

J U D G M E N T

SURINDER SINGH NIJJAR, J.

1. Leave granted.

2. Heard the Learned Counsel for the appellant. Despite service none has appeared on behalf of the respondent to oppose the appeal. The appellant has been convicted under Section 138 of the Negotiable Instruments Act (hereinafter

referred to as 'the Act'), for having issued a cheque in favour of the respondent company in the sum of Rs. 22,350/-, which was dishonoured.

3. The respondent M/s. Dhanlaxmi Finance Co. (R) Terdal is a finance company. The appellant had availed a loan of Rs.21,000/- on 31.1.2002. He had issued a cheque on 18.6.2002 for Rs.22,350/-. According to the appellant the loan had been duly paid but the respondent has failed to return back the cheque which had been taken by them as security. The Trial Court convicted the appellant to undergo six months simple imprisonment and also to pay compensation of Rs.35,000/- to the complainant.

4. Aggrieved by the judgment of the Magistrate, the appellant preferred criminal appeal in the Court of Fast Track, Court No.2, Bangalore at Bagalkot. The appeal was dismissed on 30.10.2006. The appellant, therefore, challenged the order in appeal by way of criminal revision before the High Court of

Karnataka at Bangalore. The High Court dismissed the criminal revision. Therefore, this appeal by special leave is filed against the order of the High Court.

5. Learned counsel appearing for the appellant has not challenged the conviction of the appellant. He has restricted the submission only to the question of sentence. Learned counsel submitted that the respondent is a thriving company in finance. The appellant is a small time petty businessman. He had given a blank signed cheque to the respondent company as security apart from other loan papers. He has in fact discharged the loan in time. However in view of the conviction of the appellant which had been upheld in appeal as well as the criminal revision, a prayer is made for leniency. It is stated that the appellant had already deposited Rs.5,000/- on 9.2.2007 during the pendency of the proceedings before the High Court. He has also deposited Rs.1,000/- being the fine amount imposed by the Magistrate. During the pendency of the proceedings in this Court, the

appellant deposited a sum of Rs.35,000/-. Therefore, the entire compensation as directed by the Trial Court has been paid together with the fine.

6. Upon consideration of the entire matter we are of the considered opinion that in the facts and circumstances of this case, ends of justice would be served by suitably reducing the sentence.

7. The appellant has been facing criminal prosecution for the last 7 years. He is a petty businessman. He has paid the hefty amount of compensation as a penalty for dishonour of the cheque issued by him. No material has been placed on the record to indicate that the appellant had earlier committed any such or similar offence.

8. In view of the foregoing, the conviction under Section 138 of the Act is maintained. The substantive sentence of imprisonment is set aside. However, sentence of a fine of

Rs.1,000/- is maintained and imposition of compensation in the sum of Rs.35,000/- is also maintained. The order of the Trial Court confirmed by the Fast Track Court is modified to that extent.

9. The appeal is, therefore, disposed of accordingly.

……………………………………J
(TARUN CHATTERJEE)

……………………………………J
(SURINDER SINGH NIJJAR)

NEW DELHI
DATED: DECEMBER 8, 2009