

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

CrI.R.C.No. 664 of 2013

JUDGMENT:

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This revision case is preferred by the accused aggrieved by the dismissal of Criminal Appeal No.127 of 2012 on the file of XI Additional District & Sessions Judge (FTC) Guntur at Tenali, dt.26.03.2013, confirming the judgment dt. 20.04.2012 in C.C.No.298 of 2002, on the file of I Additional Judicial Magistrate of First Class, Tenali.

2. The revision petitioners herein are the accused and the 1st respondent is the *de facto* complainant in C.C.No.298 of 2002. The appellants 1 and 2 are one and the same, representing two different concerns. The complaint was filed under Sec.138 of the Negotiable Instruments Act, the appellants were found guilty for the said offence, the trial Court sentenced the Accused to suffer simple imprisonment for a period of six months and directed to pay compensation amount of Rs.4,28,200/- under Sec.357(3) Cr.P.C. to the 1st respondent/complainant, and in default of payment of the said amount, the accused directed to undergo simple imprisonment for a further period of three months.

3. The brief facts of the case are that the accused is the proprietor of Tenali Popular Communications and Managing Director of Millennium Networks Limited, Vijayawada. The accused became indebted to a tune of Rs.6,80,073/- to the 1st respondent, while dealing with partnership firm as partners, constituting himself, 1st respondent and two others. After settlement, the accused issued a cheque for Rs.4,28,200/- dt. 20.03.2002 and executed two promissory notes for the balance amount of Rs.1,50,000/-. The 1st respondent presented the said cheque on 20.03.2002, whereupon the accused

issued a demand draft for Rs.1,00,000/- and took return of the promissory note. On second presentation of the cheque on 19.04.2002, the same was returned due to 'insufficient funds'. Thereafter, the accused issued another demand draft for Rs.50,000/- and obtained a receipt. Finally, the 1st respondent presented the cheque on 11.09.2002, whereupon it was dishonoured on 'stop-payment' instructions. Therefore, the 1st respondent initiated the present proceedings before the trial Court, demanding for payment of cheque amount of Rs.4,28,200/-.

4. The learned I Additional Judicial Magistrate of First Class, Tenali recorded the evidence of PWs.1 and 2, marked Exs.A.1 to A.10 on behalf of the complainant; recorded the evidence of DW.1 and marked Exs.D.1 to D.5, apart from examining CW.1, and marking Exs.C-1 and C.2. Thereafter, the trial Court, on consideration of the entire material on record, found the accused guilty and convicted them for the offence punishable under Sec.138 of the N.I. Act, and sentenced to undergo simple imprisonment for a period of six months. The trial Court further directed the accused to pay compensation of Rs.4,28,200/-, and in default of payment of the said amount, the accused shall undergo simple imprisonment for a period of three months. Aggrieved by the same, the accused carried the matter in appeal i.e., Crl.Appeal No.127 of 2012 before the XI Additional District & Sessions Judge, Guntur at Tenali, which was dismissed by the impugned judgment. Hence, the present revision.

5. Heard the learned counsel for the petitioner/accused, learned Public Prosecutor, learned counsel appearing for the 1st respondent, and considered the material on record.

6. The admitted case is that the petitioner/accused have been found guilty for the offence punishable under Sec.138 of the Negotiable Instruments Act, and sentenced to suffer simple

imprisonment for a period of six months, with a further direction to pay compensation of Rs.4,28,200/-, which forms part of the component of the cheque in dispute.

7. In pursuance to the orders of this Court during the pendency of the present revision petition, the petitioner accused has deposited the said sum of Rs.4,28,200/- to the credit of the case in the trial Court. Therefore, the learned counsel for the petitioner submits that when the entire cheque amount has already been paid, it is not proper to sustain the sentence of imprisonment against the petitioners/accused, who are the representatives of a Company.

8. Having heard the learned counsel appearing for both sides, perusing the material on record, and in view of the payment of the entire cheque amount by the accused, I feel it is appropriate to modify the sentence of imprisonment imposed against the petitioner/accused.

9. Accordingly, the sentence of imprisonment imposed against the petitioners/accused is set aside, and instead the petitioners/accused are sentenced to pay a fine of Rs.5,000/- (Rupees five thousands only), in addition to the amount of Rs.4,28,200/-, which they have already paid. In default of payment of fine now imposed, the petitioners/accused shall undergo simple imprisonment for a period of one month. The respondent/ complainant is permitted to withdraw the amount of compensation of Rs.4,28,200/- deposited before the Court below, if not already withdrawn.

10. In the result, the Revision Case is partly allowed. As a sequel, pending miscellaneous petitions, if any, stand closed. No costs.

M.S.K. JAISWAL, J

Date: 26.08.2015

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26.08.2015

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