

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.2674 OF 2015

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ORDER:

This Criminal Revision Case is filed against the order, dated 24.08.2015 passed in Crl.A. No.245 of 2014 by the IX Additional Sessions Judge, Kovvur, West Godavari District.

Heard and perused the material available on record.

The case of the petitioner, in brief, is that he is accused in CC No.03 of 2014 on the file of I-Additional Junior Civil Judge, Kovvur, for the offence punishable under Section 138 of the Negotiable Instruments Act. After hearing both sides and after considering the evidence on record, the trial Court found the petitioner – accused guilty of the offence punishable under Section 138 the petitioner for the above offence and accordingly convicted and sentenced him to pay compensation of Rs.1,10,000/- within one month from the date of that order i.e. 18.11.2014, in default to undergo simple imprisonment for a period of three months. Against the said order, the petitioner preferred Crl.A. No.245 of 2014 and the lower appellate Court dismissed the appeal and remitted the matter to the trial Court for imposing sentence according to law vide impugned judgment, by observing as follows in paragraph-4:

“With regard to conviction of accused for the offence punishable under Sec.138 NI Act, findings of the trial court are in accordance with evidence on record and well settled legal principles. Trial court not given sentence and only awarded compensation of Rs.1,10,000/-. As per provisions of Section 138 NI Act, once the complainant proved the guilt of accused, court has to impose sentence of imprisonment or fine or with both. Granting of compensation is not the sentence. As per provision of Sec.357 Cr.P.C, if the court wants to grant compensation and fine is part of sentence, it has to order part of fine amount as compensation to victim and if fine is not part of sentence and sentence of imprisonment alone given, then grant compensation. In the present case on hand, trial Court not imposed fine to award compensation out of that fine amount. As there is no fine, trial Court has to impose sentence of imprisonment and then only can grant compensation. With regard to sentence, findings of trial court are not in accordance with law. Therefore, to that extent, there are grounds to interfere with findings of trial Court.”

Against the said order, the present revision is filed.

Section 138 of the NI Act reads as under:

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“138 Dishonour of cheque for insufficiency, etc., of funds in the account. —

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for ¹⁹ [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both.”

In the present case, the trial Court has recorded sentence for payment of compensation and it has not recorded the sentence of fine amount. Therefore, as rightly observed by the lower appellate Court, the sentence recorded by the Court below is not in accordance with law, and hence, the lower appellate Court remitted the matter to the Court below for reconsidering the quantum of compensation already awarded. This Court is not inclined to interfere with the order passed by the lower appellate Court. However, in case the petitioner has any grievance against the order that would be passed by the trial Court after reconsidering the matter, he can approach the appellate Court by way of filing a fresh appeal.

Accordingly, the Criminal Revision Case is disposed of with the above observation. Miscellaneous petitions, pending if any, shall stand closed.

RAJA ELANGO, J

October 08, 2015.

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