

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL PETITION No.3772 of 2016

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. challenging the order dated 12-02-2016 in CrI.M.P.No.211 of 2016 in C.A.No.512 of 2014 passed by the Special Judge for trial of Cases under SC & STs (POA) Act-cum-X Additional District and Sessions Judge, East Godavari District at Rajahmundry whereby the petitioner-accused was directed to pay an amount of Rs.37,500/- towards costs for compounding the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

Heard the learned counsel for the petitioner and the learned Public Prosecutor and perused the material available on record.

The main case of the petitioner is that even though the petitioner-accused paid an amount of Rs.5,000/- towards fine, imposing of costs of Rs.37,500/- for compounding the offence at the appellate stage is highly disproportionate and is not sustainable in law. It is the further case of the petitioner that in the absence of any compensation, imposing of costs at 5% on the cheque amount is nothing but double jeopardy and the petitioner is not able to pay such amount.

It appears that the trial Court in C.C.No.217 of 2013, after a full-fledged trial, while not granting any compensation to the complainant, found the accused guilty of the offence and convicted and sentenced him to undergo simple imprisonment for six months and also to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for a period of two months. Aggrieved by the said judgment, the petitioner-accused filed Criminal Appeal No.512 of

2014. During the pendency of the appeal, the petitioner-accused filed Crl.M.P.No.211 of 2016 under Section 147 of the Negotiable Instruments Act, 1881 seeking to compound the offence alleged. The Appellate Court, considering the facts and circumstances of the cases and in the light of various judgments of the Apex Court, granted permission for compounding the offence on condition of the petitioner-accused paying 5% of the cheque amount of Rs.7,50,000/-, which comes to Rs.37,500/- towards costs on or before 19.02.2016. Challenging the said order, the present criminal petition is filed.

Having perused the material on record and on hearing the learned counsel for the petitioners, this court is of the view that the learned Appellate Judge was justified in imposing costs for compounding the offence in the light of the judgments of the Apex Court and the order impugned does not suffer from any serious legal infirmity warranting interference of this Court. However, considering the facts and circumstances of the cases and in view of the submission of the learned counsel for the petitioner that the petitioner-accused is not in a position to pay such huge costs as he is already suffering from huge financial crisis, the order dated 12.02.2016 in Crl.M.P.No.211 of 2016 in C.A.No.512 of 2014 is modified to the extent of reducing costs imposed for compounding the offence from Rs.37,500/- to Rs.5,000/- (Rupees five thousand only) payable by the petitioner-accused on or before 11-03-2016 before the Appellate Court. In the event of any failure on the part of the petitioner-accused to pay Rs.5,000/- as reduced now, the present order automatically stands recalled, making the petitioner-accused liable to pay Rs.37,500/- as ordered by the appellate Court.

With the above modification, the present Criminal Petition is disposed of to the extent indicated above. As a sequel thereto, miscellaneous petitions, if any, pending, shall stand closed.

RAJA ELANGO, J

March 21, 2016.

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