

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIL.R.C.M.P. No.4623 of 2016

AND

CRIMINAL REVISION CASE No.2865 of 2016

COMMON ORDER:

This criminal revision case is filed under Sections 397 and 401 Cr.PC challenging the judgment dated 31.10.2016 in Criminal Appeal No.177 of 2015 passed by the Court of the Additional Metropolitan Sessions Judge for trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge, Hyderabad, confirming the judgment dated 11.2.2015 in new C.C. No.544 of 2013 (old C.C. No.771 of 2013) on the file of the Court of the XXV Special Magistrate, Hyderabad wherein and whereby the petitioner herein was convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/- in default of payment of the fine amount, to suffer simple imprisonment for three months.

2. The petitioner is the accused and the first respondent is the complainant in C.C. No.544 of 2013. The parties will be hereinafter referred to as they were arrayed before the trial court.

3. Cril.R.C.M.P.No.4623 of 2016 is filed by the complainant under Section 147 of the Negotiable Instruments Act to permit him to compound the offence with the accused and consequently set aside the conviction and sentence imposed against the accused.

4. Sri Bankatlal Mandhani, learned counsel identified the petitioner-accused and Sri Pradip Tornekar, learned counsel identified the first respondent-complainant.

5. The complainant in the open court submitted that he voluntarily entered into compromise with the accused at the advice of one Dr.Sudheer Naik. He further submitted that an amount of Rs.15,000/- was paid to the High Court Legal Services Committee, Hyderabad towards costs for the purpose of compromising the matter and filed copy of the receipt No.665, dated 22.11.2016 along with joint memo. He also submitted that the accused paid the amount to him towards full and final settlement, vide Demand Draft No.004522 of Bank of Maharashtra, Bank Street, Hyderabad.

5. In **Damodar S.Prabhu v Sayed Babalal H¹**, the Hon'ble apex court framed certain guidelines to permit the parties to compound the offence under Section 138 of the Negotiable Instruments Act. The guideline (c) is relevant, which reads as follows:

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

6. In this case, the cheque amount is Rs.1,00,000/-; therefore, if the compromise is to be permitted in this revision, an amount of Rs.15,000/- has to be paid by the accused towards costs. As observed above, an amount of Rs.15,000/- was paid to the High Court Legal Services Committed towards costs. Accordingly, the parties have complied with the guidelines issued by the apex court

¹ (2010) 5 SCC 663

to permit them to compound the offence under Section 138 of the Negotiable Instruments Act.

7. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that it is a fit case to permit the parties to compound the offence and accordingly acquit the petitioner for the offence under Section 138 of the Negotiable Instruments Act.

8. In the result, CrI.R.C.M.P.No.4623 of 2016 is ordered. The criminal revision case is allowed, setting aside the conviction and sentence imposed against the petitioner-accused in C.C. No.544 of 2013 as confirmed in CrI.A.No.177 of 2015 and, consequently, he is acquitted for the offence under Section 138 of the Negotiable Instruments Act. Miscellaneous petitions, if any pending in the criminal revision case, shall stand closed.

T.SUNIL CHOWDARY, J

November 24, 2016.

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