

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1727 OF 2012

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 27.07.2012 in Crl.M.P.No.523 of 2012 in Crl.A.No.240 of 2011 on the file of the Court of the Special Judge for the trial of offences under S.Cs. and S.Ts. (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad.

2. The facts leading to filing of the present criminal revision case are briefly as follows:

The petitioners herein faced the trial in C.C.No.851 of 2006 on the file of the Court of the XI Additional Chief Metropolitan Magistrate at Secunderabad for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'). After full-fledged trial, A.1 represented by A.2 was convicted for the offence punishable under Section 138 of the

N.I. Act. and sentenced to pay fine of Rs.20,000/- and in default of payment of fine, A.2 representing A.1 company shall suffer simple imprisonment for six months. A.2 was convicted for the offence punishable under Section 138 of the N.I. Act and sentenced to undergo rigorous imprisonment for a period of one year and pay compensation of Rs.3,21,750/- being double the cheque amount within two months from the date of the judgment towards compensation under Section 357 Cr.P.C. If A.2 fails to pay the said compensation amount within stipulated time, complainant firm is entitled to recover the same treating the same as fine by following the provisions under Section 421 Cr.P.C. Feeling aggrieved by the conviction and sentence, the petitioners herein filed Criminal Appeal No.240 of 2011 on the file of the Special Judge for the trial of offences under S.Cs. and S.Ts. (POA)

Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad.
During pendency of the appeal, the petitioners herein filed a petition
under Section 147 of the N.I. Act. After affording a reasonable
opportunity to both parties, the trial Court dismissed the petition.
Hence, the present revision.

3. The petitioners filed the present petition before the trial Court to
permit the petitioners to deposit the cheque amount and costs and
thereby set aside the conviction and sentence imposed against them
by compounding the offence.

4. The first respondent herein filed a counter *inter alia* contending
that the petitioners cannot be permitted to compound the offence
without paying the amount of compensation awarded by the trial Court.

5. The contention of the learned counsel for the petitioners is two
fold: (1) the trial Court misconstrued the scope of Section 147 of the
N.I. Act and dismissed the petition on erroneous grounds; and (2) the
trial Court ought to have allowed the petition as the petitioners
expressed their willingness to deposit the cheque amount.

6. *Per Contra*, the learned counsel for the first respondent
submitted that mere depositing of the cheque amount would not be a
valid ground to allow the petition. He further submitted that the Court
cannot compel one of the parties to the proceedings to enter into a
compromise.

7. It is a settled principle of law that the Court can compound the
offence if both the parties file a petition to that effect. In the instant
case the first respondent is opposing for compounding of the offence.
The predominant contention of the learned counsel for the petitioners
is that when the petitioners are ready and willing to pay the cheque
amount and costs, no prejudice will be caused to the first respondent
even if the petition is allowed.

8. To substantiate the argument, the learned counsel for the first respondent has drawn my attention to the ratio laid down in **Rajneesh Aggarwal v. Amit J.Bhalla**^[1]. To appreciate the rival contentions, it is not out of place to extract hereunder paragraph No.7 of the said judgment.

“(7) So far as the question of deposit of the money during the pendency of these appeals is concerned, we may state that in course of hearing the parties wanted to settle the matter in Court and it is in that connection, to prove the bona fide, the respondent deposited the amount covered under all the three cheques in the Court, but the complainant’s counsel insisted that if there is going to be a settlement, then all the pending cases between the parties should be settled, which was, however not agreed to by the respondent and, therefore, the matter could not be settled. So far as the criminal complaint is concerned, once the offence is committed, any payment made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the Court trying the offence. But by no stretch of imagination, a criminal proceeding could be quashed on account of deposit of money in the Court or that an order of quashing of criminal proceeding, which is otherwise unsustainable in law, could be sustained because of the deposit of money in this Court. In this view of the matter, the so-called deposit of money by the respondent in this Court is of no consequence.”

As per the principle enunciated in the case cited supra, mere depositing of the cheque amount that itself is not a valid ground to quash the proceedings against the accused.

9. As observed earlier, the trial Court directed the second petitioner herein to pay compensation amount of Rs.3,21,750/-, which is double the cheque amount. If really the petitioners are intending to settle the matter, they are at liberty to negotiate with the first respondent and arrive at a just and reasonable conclusion. Without consent of the first respondent, it is not fair on the part of the Court to compound the

offence by accepting the cheque amount. While compounding the offence, the Court has to strictly adhere to the procedure contemplated under the Cr.P.C. and N.I. Act as well as the principles laid down by the Hon'ble Supreme Court. The trial Court rightly considered the scope of Section 147 of the N.I. Act and dismissed the petition. The trial Court has assigned cogent and valid reasons to its findings. If there is any illegality or irregularity in the orders of the trial Court, this Court can set aside the same by exercising the jurisdiction under Sections 397 and 401 of Cr.P.C. There is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court. Viewed from any angle, there are no grounds much less valid grounds to allow the revision. Hence, the criminal revision lacks merits and *bona fides*.

10. In the result, the Criminal Revision Case is dismissed at the stage of admission.

11. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

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T.SUNIL CHOWDARY, J

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Date: 11.07.2016

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^[1] 2001-SCC-1-631