

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2343 OF 2013

Heard the learned counsel for the revision petitioner and also the 2nd respondent-complainant of C.C.No.164 of 2011 outcome of a private complaint on the file of the VIII Special Magistrate, L.B.Nagar at Hasthinapur, Ranga Reddy District, for the offence u/ sec. 138 of the Negotiable Instruments Act (for short, 'the N.I.Act'), based on Ex.P.1 cheque for Rs.6,00,000/- (Rupees six lakhs only) dated 14.03.2011. The learned Magistrate taken cognizance and after the accused denied the accusation, the complainant was examined as P.W.1 and placed reliance upon Exs.P.1 to P.6 which include Ex.P.1 cheque referred supra, cheque return memo, office copy of legal notice with postal receipt, postal acknowledgment and the complainant got issued by the complainant's counsel to the postal authorities and on behalf of the accused, he did not come to witness box but referred Exs.D.1 and D.2 in the cross-examination of P.W.1 which are sale agreement-com-GPA with possession dated 02.08.2010 and registration extract of sale deed, dated 27.07.2011. The trial Court, having discussed the same and from showing of the cheque issued by the accused routed from his account that was dishonoured and so far as the so called sale agreement and sale deed covered by Ex.D.1 and D.2, the trial Court negated the defence saying it is beyond the scope of the cheque dishonoured case and remedy is left open to pursue in a civil Court if at all and

thereby also liable for that presumption available of the cheque issued is legally enforceable debt or other liability and also proved from evidence of P.W.1 with no oath against oath. The non-giving of reply also one of the presumptions as per the three Judge Bench expression of the Rangappa Vs. Mohan¹ in favour of the complainant and the lower appellate Court having referred to the above, confirmed by its judgment dated 28.10.2013 the trial court's conviction judgment, dt.11.05.2012 however modifying the sentence of Simple Imprisonment for one year to six months and to pay a fine of Rs.6,50,000/- (Rupees six lakhs fifty thousand only) out of which Rs.6,30,000/- as compensation to the complainant and the remaining shall go to the State vide judgment dated 11.03.2001. Impugning the appellate Court's confirmation of the finding of the guilt however modifying the Simple Imprisonment from one year to six months, the present revision is filed.

Heard and perused the material on record.

The version of the 2nd respondent-complainant, appearing as a party in person, is that his endeavour is to see that the cheque amount with interest or reasonable compensation is to be paid to him rather than sending the accused to jail. The accused relied on the expression of the Apex Court in Somanath Sarka Vs. Utpal Basu Mallick², there referring to Section 143 of the N.I. Act, which is somewhat different from Section 138 of the NI Act. From the non obstante clause, the Court got power in conducting the

¹ (2010) SC 1898

² (2014) (1) ALT CrI. 145.

case summarily, the power to conduct even as regular summons Case in summary trial, the imprisonment upto one year however, with a fine amount above Rs.5,000/- unlimited it is by invoking that provision covered by the Section 143 of the Act 55 of 2002 w.e.f. 06.02.2003 as the amendment is subsequent to that, in view of the submissions supra and in view of the conclusion arrived for nothing to find fault with the concurrent findings of the Courts below, the sentence of 6 months imprisonment is modified till rising of the day however by enhancing the fine amount to Rs.9,00,000/- from Rs.6,50,000/- of which Rs.50,000/- shall go to State, remaining Rs.8,50,000/- payable to the complainant. The accused is given three months time to pay the said amount in addition to anything so far paid, failing which the trial Court shall enforce by levying under Section 421 read with 431 of Cr.P.C.

Accordingly and in the result, with the modification and direction supra, the Revision is allowed.

Consequently, pending miscellaneous petitions, if any, shall stand closed.

Date:10.04.2017.

Dr. B.SIVA SANKARA RAO J,