

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION Nos. 12293, 12303,12321

& 12322 of 2016

COMMON ORDER:

Since the issue involved in all these Criminal Petitions is similar, all these petitions are disposed by a Common Order.

2. These criminal petitions are filed under Section 482 Cr.P.C., seeking to quash the common order dated 18.4.2016 passed by the I Additional Metropolitan Sessions Judge, Hyderabad, in Criminal Revision Petition Nos. 183/2014, 184/2014, 202/2014 and 203/2014, whereby the revisional Court dismissed all the revisions filed under Section 374 (3) of Cr.P.C., confirming the order passed by the X Special Magistrate, Hyderabad.

3. The petitioner herein filed a private complaint in all these petitions, against respondents for the offence under Section 138 of Negotiable Instruments Act, 1881 with the X Special Magistrate, Hyderabad and the X Special Magistrate, Hyderabad found all the accused guilty but no sentence was imposed against first accused while sentencing other accused.

4. Aggrieved by the above calendar judgment, the Criminal Revision Petitions are filed under Section 397(3) of Cr.P.C, but the Revisional Court also dismissed the petitions confirming the order, by

a common order. In fact, the orders of the trial Court and revisional Court are erroneous as the juristic person is liable for punishment by way of penalty or by way of imposing fine, but the trial Court and revisional Court did not consider the same. Hence, the Criminal Petitions.

5. During hearing, learned counsel appearing for petitioner would contend that a revision is maintainable against an order passed under Section 397(3) Cr.P.C., and placed reliance on a judgment of the Supreme Court in *Kailash Verma vs. Punjab State Civil Supplies Corporation and another*¹, and contended that even though the first accused is a juristic person, the Court can impose fine and the offence punishable under Section 138 of Negotiable Instruments Act, is punishable both with imprisonment and fine. But both the trial Court and the revisional Court did not consider the issue in proper perspective and committed an error and requested this Court to remand the matter along with other appeals.

6. Learned counsel appearing for respondents/accused did not raise any specific objection regarding maintainability of petitions under Section 482 Cr.P.C, but however, supported the finding recorded by the trial Court and revisional Court for not imposing any sentence against the first accused.

¹ (2005) 2 SCC 571

7. As per the judgment of the Apex Court in ***Kailash Verma vs. Punjab State Civil Supplies Corporation and another*** (supra), against an order passed in exercise of power under Section 397(3), petition under Section 482 Cr.P.C., is maintainable.

8. While finding the accused guilty for the offence under Section 138 of Negotiable Instruments Act, ignoring that the 1st accused is juristic person to impose punishment is an error in view of the judgment reported in ***Standard Chartered Bank and others v Directorate of Enforcement and others***², wherein the Supreme Court at paragraphs 21 & 31 held as under:

“21. In *Oswal Vanaspai & Allied Industries v. State of U.P.* (1993) 1 Comp LJ 172: (1992) 75 Comp Cas 770 (All) (FB), the appellant Company sought to quash the complaint filed against it by the Food Inspector under various sections of the Act alleging that the Company cannot be prosecuted for an offence under Section 16 of the Act as the sentence of imprisonment provided under that section after its amendment by the Prevention of Food Adulteration (Amendment) Act 34 of 1976 which is mandatory cannot be awarded to it. In Comp LJ para 7, the Full Bench of the Allahabad High Court held as follows: (Comp Cas p.773)

“A company being a juristic person cannot obviously be sentenced to imprisonment as it cannot suffer imprisonment. The question that requires determination is whether a sentence of fine alone can be imposed on it under Section 16 of the Act or whether such a sentence would be illegal and hence cannot be awarded to it. It is settled law that sentence or punishment must follow conviction and if only corporal punishment is prescribed a company which is a juristic person cannot be prosecuted as it cannot be punished. If, however, both sentence of imprisonment and fine is prescribed for natural persons and juristic persons jointly then though the sentence of imprisonment cannot be awarded to a company, the sentence of fine can be imposed on it. Thus, it cannot be held that in such a case the entire sentence prescribed cannot be awarded to a company as a part of the sentence, namely, that of fine can be awarded to it. Legal sentence is the sentence prescribed by law. A sentence

² (2005) 4 SCC 530

which is in excess of the sentence prescribed is always illegal but a sentence which is less than the sentence prescribed may not in all cases be illegal.”

31. As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the Court can impose the punishment of fine which could be enforced against the company. Such discretion is to be read into the section so far as the juristic person is concerned. Of course, the court cannot exercise the same discretion as regards a natural person. Then the court would not be passing the sentence in accordance with law. As regards company, the Court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake a series of activities that affect the life, liberty and property of the citizens. Large-scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy.”

9. Therefore, in view of the judgment of the Apex Court, failure of the trial Court and Revisional Court to impose sentence by way of fine against first accused/Company is illegal and the same is hereby set aside while remanding the matter to I Additional Metropolitan Sessions Judge, Hyderabad for fresh decision on the facts of each case.

10. Accordingly, these Criminal Petitions are allowed and the Common Order dated 18.4.2016 passed in Criminal Revision Petition Nos. 183/2014, 184/2014, 202/2014 and 203/2014, is set aside and the matters are remanded to the I Additional Metropolitan Sessions Judge, Hyderabad. The I Additional Metropolitan Sessions Judge, Hyderabad is directed to dispose of all the Criminal Revision Petitions

along with Criminal Appeal Nos. 776, 778, 797, 799, 817, 818, 822, 831, 839, 1014, 1140 and 1141 of 2016, as expeditiously as possible, in any event, but not later than 6 months from the date of receipt of a copy of this Order.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 20.04.2017.

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