

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CrI.R.C.M.P.No.5228 of 2016
and/in
CrI.R.C.No.1328 of 2017

ORDER:

Heard both sides in the delay condonation petition CrI.R.C.M.P.No.5228 of 2016 and also the main revision and the delay is condoned by allowing the petition and the revision is taken up for disposal and perused the material on record.

2. The fact that the Ex.P.1 cheque routed from the account of the the accused and it bears his signature is not in dispute. There is also signature of D.W.2 on the Ex.P.1 promissory note. D.W.2 in the cross-examination for stated that P.W.1's son was running chit business and at that time of joining the scheme as a security, cheque was obtained is not proved by any cash even. Even Ex.D.1 so called book noting chit transactions and payments when denied by the P.W.1 that is not even sent to expert for comparison of writings of the P.W.1 to substantiate the fact therefrom and following the expression of the three Judge Bench in Rangappa Vs. Mohan¹ from the reverse onus clause, the burden lies on the accused which could not be rebutted even by preponderance of probabilities.

3. From the discussion above, there is nothing to interfere with the concurrent findings of the lower Courts in finding the accused guilty for the offence punishable u/ sec. 138 of the Negotiable Instruments Act (for short, 'the Act'). The cheque in question is for Rs.1,00,000/-. The trial Court convicted the accused to undergo six (6) months Simple Imprisonment with a fine of Rs.2000/- with default sentence of one month and the same was confirmed by the lower appellate Court following the Damodar S.Prabhu

¹ (2010) SC 1898

Vs. Sayed Babalal² and R.Vijayan Vs. Baby³ and also from Somnath Sarka Vs. Utpal Basu Mallick⁴, the offence u/ sec. 138 of NI Act, is somewhat different to the other conventional crimes because it is a crime against a person but not against the society. The endeavour of the complainant generally is to recover the cheque amount with interest by way of a fine or compensation, thereby provided upto double the amount of the cheque to compensate. From the submissions by the learned counsel for the complainant/revision respondent that it is not his endeavour to send the accused to jail rather to recover the appropriate fine/compensation and following the above expressions and from section 143 of the N.I.Act, this Court feels that it is just to subserve the ends of justice and from the expressions to convert the sentence of 6 months Simple Imprisonment and even a fine of Rs.2,000/- with a default sentence of one month into sentence to till rising of the day and a fine/compensation of 1,75,000/- out of which Rs.25,000/- goes to the State, and Rs.1,50,000/- towards compensation to the complainant and if at all after deduction of payment of Rs.25,000/- claimed paid if any, earlier, the remaining balance is payable by the accused within three months from today. Failing which the trial Court shall enforce it by levy u/ sec.421 CrPC.

4. Having regard to the above and in the result, CrI.R.C.M.P.No.5228 of 2016 is allowed and the revision is partly allowed. Consequently, miscellaneous petitions, if any pending shall stand closed.

Date:13.04.2017.

Dr. B.SIVA SANKARA RAO J,

² 2010 (5) SCC 663

³ 2012 (1) SCC 260

⁴ (2014 (1) ALT CrI.145