

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.178 of 2006

ORDER:

Aggrieved by the judgment, dated 16.11.2005, in C.C.No.275 of 2004 on the file of the I-Additional Chief Metropolitan Magistrate, Visakhapatnam, the complainant preferred the present Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code').

By the aforesaid judgment, the learned Metropolitan Magistrate convicted the respondents 2 to 6 herein, amongst whom respondent No.2 is a Mutually Aided Co-operative Credit Society, whereas the Chairman and the Managing Director of the said Society are shown as the other respondents, under Section 255 (2) of the Code for the offence punishable under Section 138 of the Negotiable Instruments Act (for short, 'the Act') and sentenced them to pay a fine of Rs.5,000/- each and, in default, to suffer Simple Imprisonment for three months each and out of the said fine, a sum of Rs.2,500/- was ordered to be paid to the complainant towards compensation as provided under Section 357 (3) of the Code. Further, the respondents 2 to 6 were directed to pay a sum of Rs.1,000/- each to the complainant towards costs as provided under Section 359 of the Code, in default to suffer Simple Imprisonment for a period of 15 days each.

Heard learned counsel for the petitioner and learned counsel for the respondents.

Learned counsel for the revision petitioner, in fact, would submit that the cheque amount was Rs.2,28,671/- and the members of the Complainant - Regional Directorate Health Employees Co-operative Credit Society Limited, deposited Rs.2,10,000/- originally and the sentence of fine imposed is a flea-bite sentence and, therefore, prayed to set aside the sentence of fine and remit the matter to the trial Court for awarding suitable sentence placing reliance on the ruling in **Suganthi Suresh Kumar v. Jagdeeshan**¹.

Now, the short question that arises for consideration is, whether the request of the revision petitioner can be acceded to in remitting the matter to the trial Court for modifying the sentence?

It would be appropriate to extract the observations made by the Honourable Supreme Court in paragraphs '5' and '12' to '15' of the aforesaid decision, which read thus:

“5. In the said decision (**K. Bhaskaran v. Sankaran Vaidhyan Balan**²), this Court reminded all concerned that it is well to remember the emphasis laid on the need for making liberal use of Section 357 (3) of the Code. This was observed by reference to a decision of this Court in **Hari Singh v. Sukhbir Singh**³. In the said decision this Court held as follows:

"The quantum of compensation may be determined by taking into account the nature of crime, the justness of the claim by the victim and the ability of accused to pay.

¹ (2002) 2 SCC 420

² (1999) 7 SCC 510: 1999 SCC (Cri) 1284

³ (1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127

If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The court may enforce the order by imposing sentence in default.” (emphasis supplied).

12. The total amount covered by the cheques involved in the present two cases was Rs.4,50,000. There is no case for the respondent that the said amount had been paid either during the pendency of the cases before the trial court or revision before the High Court or this Court. If the amounts had been paid to the complainant there perhaps would have been justification for imposing a flea-bite sentence as had been chosen by the trial court. But in a case where the amount covered by the cheque remained unpaid it should be the lookout of the trial Magistrates that the sentence for the offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount at least during the pendency of the case.

13. Learned counsel for the respondent contended that the complainant has subsequently filed a civil suit and attached all the properties of the respondent. That is not a ground for lessening the gravity of the offence or to impose a minor sentence chosen by the trial court.

14. As we propose to remit the case back to the trial court, we do not wish to indicate what exactly should be the limit of proper sentence to be passed. The trial Magistrate shall hear both sides once again in the matter of sentence and pass a sentence which is condign. We, therefore, set aside the sentence passed on the respondent and remit the case back to the trial Magistrate for passing appropriate sentence on the respondent after hearing both sides.

15. Learned counsel for the respondent made a plea that if the respondent is able to make payment of the amount covered by the cheques he shall not be debarred from taking up the plea for mitigation of the sentence. The respondent will be entitled to make such a plea in the event of his succeeding in paying the amount covered by the cheques.”

In the judgment under challenge, the learned Metropolitan Magistrate raised the presumption under Section 139 of the Act placing reliance on the decision of the Honourable Apex Court in **M/s Modi Cements Limited v. Kuchil Kumar Nandi**⁴ and recorded conviction as stated in the above. When the learned Metropolitan Magistrate questioned accused Nos.4 and 5, who are the Chairman and the Managing Director of accused No.1 - Society, with regard to quantum of sentence, they represented that since their Society was financially in bad position, they could not comply with the demand of the complainant made through legal notice and they were prepared to

⁴ AIR 1998 SC 1057

pay back the amount due and requested to take a lenient view. Keeping in view, the said circumstances, the learned Magistrate, opining that imposing maximum sentence would be on high side, took the view to impose fine of Rs.5,000/- on each of them and, accordingly, imposed the same as mentioned in the above.

Learned counsel for the revision petitioner has not come out whether the respondents 2 to 6 have preferred any criminal appeal or whether they have paid any amount, as promised when they were questioned by the learned Metropolitan Magistrate. Basing on the ruling in **Suganthi Suresh Kumar** (1 supra), the learned counsel would seek a direction to the trial Court to inflict suitable sentence of imprisonment as well as compensation.

It is to be noticed that the Calender Case relates to the year 2004 and the present revision case was filed in the year 2006. Since eleven years period elapsed from the date of filing of the present revision case, setting aside the sentence of fine imposed by the trial Court and remitting the matter to pass suitable sentence at this stage, would, certainly, cause serious prejudice to the respondents 2 to 6, more particularly, when nothing is forthcoming whether the respondents 2 to 6 preferred any criminal appeal or whether they have paid the amount as promised before the learned Metropolitan Magistrate when questioned on the quantum of sentence.

The cause title in the Calender Case as well as the present criminal revision case is silent about the age of the respondents 3 to 6. Though, the Honourable Supreme Court has laid down the law in **Suganthi Suresh Kumar** (1 supra), but, in view of the aforesaid circumstances that the Calender Case is of the year 2004 and eleven years have elapsed from the date of filing of the present revision case, more particularly, when ignorance is expressed as to whether the amounts have been paid by the respondents 2 to 6 or any criminal appeal is preferred by them, it is not a case where inference is warranted.

Accordingly, the present Criminal Revision Case is dismissed.

Miscellaneous Petitions, if any, pending in the present revision case stand closed.

A. SHANKAR NARAYANA, J

27.12.2017
v v