

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA PRADESH

Crl.R.C.M.P.Nos.1708 & 1709 of 2016
IN/AND
CRIMINAL REVISION CASE No.2887 of 2015

Between:

Crl.R.C.M.P.No.1708 & 1709 of 2016

M. Mohan Rao

.....Petitioner

and

Bheemshetty Sreedhar and another

.....Respondents

Crl.R.C.No.2887 of 2015

Bheemshetty Sreedhar

.....Petitioner

and

M. Mohan Rao and another

.....Respondents

Date of Judgment pronounced on : 18-04-2017

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

*** HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

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> HEAD NOTE:

! Counsel for the petitioner : Sri T. Pradyumna Kumar Reddy

^ Counsel for the respondents : Sri D.V. Reddy for 1st respondent
Learned Public Prosecutor for State

? Cases referred

1. 2001 CrI.L.J. 4745
2. (2015) 9 SCC 622
3. (2012) 1 SCC 260
4. (2014) 16 SCC 32
5. (1990) 2 SCC 385
6. (1977) 3 SCC 25
7. (1990) 4 SCC 718
8. 2010 (5) SCC 663
9. 2013 (16) SCC 465
10. (2007) 6 SCC 555

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**Crl.R.C.M.P.Nos.1708 & 1709 of 2016****IN/AND****CRIMINAL REVISION CASE No.2887 of 2015****ORDER:**

The revision petitioner is the sole accused in C.C.No.216 of 2012 on the file of Special Magistrate V, Hyderabad, which is for the offence under Section 138 of the Negotiable Instruments Act (for short 'the Act') and taken cognizance from the private complaint of the revision 1st respondent-complainant based on Ex.P11-cheque bearing No.601175 dated 05.12.2011 for Rs.5,00,000/- which is claimed towards the part payment of out of the total amount of Rs.35,00,000/- based on memorandum of understanding-cum-deed of compromise dated 03.02.2011 under Ex.P10, which is outcome of contract for sale-cum-GPA dated 07.04.2011 Ex.P1 in relation to the property covered by original of Ex.P3-sale deed dated 02.12.2010.

2. The factual background show the complainant entered into said sale agreement-GPA with 4 persons viz., Smt. R.Rani, N.R. Nareder, N.R. Ravinder and S.Dhanalaxmi in relation to open plot of 272 square yards in survey Nos.39 & 40, Kakaguda Village of Secunderabad and for consideration of Rs.35,00,000/- and on came to know of said property already sold by the said vendors collusively to the accused under original sale deed supra, the complainant demanded for refund of the amount from all including the accused and on their refusal, there was a criminal case for the offence of cheating and criminal breach of trust and also police registered the crime and pending crime, there was a compromise whereunder the accused promised to pay Rs.35,00,000/- for final

settlement of the amount due to the complainant vide the MOU-compromise deed dated 03.12.2011 supra and issued the Ex.P11-cheque in question and when presented the same was returned dishonoured on the ground of stop payment, on 08.12.2011 and from the statutory legal notice sent to the accused returned as unclaimed from the accrual of cause of action filed the complaint.

3. After sworn statement recorded, the learned Magistrate has taken cognizance for the offence by taken case on file and after supply of copies and from examination of accused and on his denial of the accusation put to trial. In the course of trial, the complainant came to the witness box as PW.1 and placed reliance on 22 documents including those materially relevant referred supra. From said evidence and after hearing both sides, the trial Court held that the cheque is routed from the account undisputedly and it is in settlement of the amount due for the sale agreement outcome of compromise and settlement, which is within the meaning of legally enforceable debt and the burden is on the accused also to rebut the presumptions and still to say how not liable by also referring to the expression of the Apex Court in **K.N.Beena Vs. Muniyappan**¹ and found him guilty for the offence and after hearing, sentenced to undergo six months rigorous imprisonment with payment of fine Rs.10,000/- with default sentence of 3 months saying out of said fine amount of Rs.9,000/- as compensation payable to the complainant.

4. Against said conviction judgment dated 12.03.2014, the accused preferred Crl.A.No.291 of 2014 and the learned

¹ 2001 Crl.L.J. 4745

Metropolitan Sessions Judge as FAC I Additional Metropolitan Sessions Judge vide judgment dated 23.12.2015 dismissed the appeal confirming the trial Court's conviction judgment and also the sentence of imprisonment with fine by repelling the several of the contentions raised by the accused/appellant in the grounds of appeal.

5. It is impugning the same, the present revision is filed with the contentions that the Ex.P10-MOU shows the complainant can retain the property if consideration of Rs.35,00,000/- is not paid and the Ex.P11 was issued on condition of the complainant will withdraw the civil suit and according to MOU-Ex.P10 any dispute will be settled amicably and the cheque case is not sustainable and the amount covered by the statutory notice is not for the cheque amount but the entire amount, notice is also not legally sustainable and thereby the conviction judgment with concurrent finding is unsustainable and accused is entitled to be acquitted by allowing the revision.

6. Pending revision, there was interim suspension of the conviction judgment subject to executing a bond with sureties and the complainant-R.1 to the revision sought for vacating the interim orders of suspension and also filed application to dismiss the revision and also to enhance the sentence of imprisonment with fine and further to award compensation of Rs.5,00,000/- against the accused in favour of the complainant vide Crl.R.C.M.P.Nos.1708 & 1709 of 2016.

7. Heard the learned counsel for the revision petitioner/accused and also the learned counsel for the revision

1st respondent respectively at length and perused the material on record.

8. In so far as compensation and enhancement of sentence concerned, the complainant placed reliance on the expression of the Apex Court in **Mainuddin Abdul Sattar Shaikh Vs. Vijay D. Salvi**² particularly from Paras 14 & 15 saying dishonour of cheque for Rs.74,200/- the sentence of accused to undergo simple imprisonment of 5 months and compensation of twice the cheque amount is awarded therein by referring to **R. Vijayan Vs. Baby**³ saying the provisions of the Act strongly lean towards grant of reimbursement of the loss suffered by complainant by compensation and the Courts should unless there are special circumstances uniformly exercise power to levy fine up to twice the amount of cheque keeping in view the cheque amount and the simple interest @ 9% p.a. as a reasonable quantum of loss and direct payment of such amount as compensation by way of restitution in regard to loss on account of dishonor of cheque in a practical and realistic way as a reasonable one, to say it is not only ordering payment of cheque amount but also interest at such rate thereon not only increase credibility of cheque as a negotiable instrument but also credibility of Courts of Justice. Needless to say with default sentence for non-payment of said cheque amount with interest. The expression says it is not the imprisonment but mainly payment of the cheque amount with interest to compensate the complainant. The other expression placed reliance is **S.R.**

² (2015) 9 SCC 622

³ (2012) 1 SCC 260

Sunil & Company Vs. D.Srinivasavaradan⁴ the Apex Court held for the cheque amount of Rs.5,38,425/- which is in the interest component for the borrowal amount ordered to pay concerned as fine with default sentence saying undisputedly the principal amount paid by the accused but the interest component for the cheque pending for the last 15 years without realization, thereby held the sentence no way called for interference where learned Magistrate imposed till rising of the day and payment of the amount. The other judgment placed reliance is **Sahab Singh and Others Vs. State of Haryana**⁵ it says the High Court got even *suo motu* revision powers to enhance the sentence in exercise of such revision powers even in the appeal against conviction maintained by the accused and even no appeal against sentence filed by State and such power is there from the reading of the provisions under Sections 397, 401, 374, 377 & 386 Cr.P.C. In fact coming to the Section 401 Cr.P.C., there is a specific bar under Section 401 clause (3) Cr.P.C. of if it is against acquittal, the revision Court has no power to impose sentence, but for if at all to remand. The wording in this Section is that the High Court cannot convert the acquittal into conviction.

9. No doubt the case in Sahab Singh supra and also the case on hand are not against acquittal, but by accused against conviction and the complainant represented by State in a police case even not maintained in revision what was held is the High Court got the revision powers even *suo motu* to take with an opportunity to accused appellant to contest with the same. The

⁴ (2014) 16 SCC 32

⁵ (1990) 2 SCC 385

said *suo motu* revision for passing orders for that conclusion by the two Judge Bench in Sahab Singh relied upon earlier Three Judge Bench of **Eknath Shankarrao Mukkavar Vs. State of Maharashtra**⁶ saying provision of appeal against inadequacy of sentence does not take away High Court's power to enhance the sentence by exercising *suo motu* powers apart from the said power to file appeal against the inadequacy of sentence, which is no doubt in relation to Food Adulteration case outcome of private complaint procedure. The other decision placed reliance is in this regard is **Govind Ramji Jadhav Vs. State of Maharashtra**⁷ of the *suo motu* revision powers of the High Court to enhance the sentence however by giving opportunity of hearing to the accused in compliance with the principles of natural justice. The other decision referred is of the Three Judge Bench in **Damodar S.Prabhu Vs. Sayed Babalal**⁸ saying the object of incorporating the penal provisions by Sections 138 to 142 of the Act amended by 66/1988 is to provide a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques as possibility of imprisonment provides a remedy of punitive nature and provision for imposing fine thereby may extend to twice the amount of cheque to serve as compensatory purpose to the complainant for the dishonour of cheque to describe the same as regulatory offence as the impact of the offence usually confirmed to private parties involved in the commercial transactions, which is somewhat different to other conventional offences. Even the Two Judge Bench expression of the Apex Court in **Somnath Sarka vs.**

⁶ (1977) 3 SCC 25

⁷ (1990) 4 SCC 718

⁸ 2010 (5) SCC 663

Utpal Basu Mallick⁹ clearly says generally in cheque bouncing cases as per the settled law the endeavour of the complainant is only to get the cheque amount with interest rather than punishing the accused for somewhat different to other conventional offence with punitive measure.

10. Here the cheque in question was dated 05.12.2011. What the Section 138 of the Act speaks is imprisonment up to 2 years or double the amount of cheque or both as the case may be. But for the amendment introduced to Section 143 of the Act by Act No.55/2002 with effect from 06.02.2003 providing for expeditious disposal by adopting summary trial rather than summons case, the fine to be imposed is above Rs.5,000/- notwithstanding anything contained in Cr.P.C. with imprisonment up to maximum of one year. This amendment provides where fine is imposed above Rs.5,000/- it is with imprisonment which shall not exceed one year notwithstanding anything contained even in Section 138 of the Act and even Section 29 Cr.P.C. Thus for lack of non absentee clause in Section 138 which un-empowers a Magistrate to impose more than fine of Rs.5,000/-, that is amended in 2005 in Cr.P.C. Section 29 (2) Cr.P.C. to Rs.10,000/-, however by virtue of Section 143 after 06.02.2003 for the offence subsequent to that, fine about Rs.5,000/- can be imposed unlimited from the bar under Section 138 of the Act or Section 29 (2) Cr.P.C. have no application for Section 143 prevails over them.

11. Here from the series of expressions though the complainant by the 2 applications sought for awarding of

⁹ 2013 (16) SCC 465

Rs.5,00,000/- as compensation in addition to the cheque amount and also to enhance the sentence of imprisonment to the maximum of 2 years, in view of the expressions relied by the complainant itself which shows the aims and objectives of the provisions of the Act which are somewhat different to the punitive consequence in the sentencing policy in other conventional crimes, more particularly, in **Damodar S.Prabhu, R.Vijayan, S.R. Sunil & Company** and also **Mainuddin supra** besides **Somanth Sarka supra**, where it was held, imposing of sentence imprisonment till rising of the day is just besides to compensate the complainant by not only ordering of the amount of the cheque but also further compensation to the complainant in the form of interest or otherwise up to double the amount of the cheque. It is in relation to the sentence concerned.

12. Now coming to the legality and correctness of the concurrent findings of the conviction judgments of the Courts below impugning by the appellant concerned, undisputedly the Ex.P10 undertaking letter executed by the accused to compensate the complainant for the sale agreement consideration and out of part payment of which, the cheque in question issued from his account. It is proved by complainant by said evidence of the cheque issued is for legally enforceable debt or other liability covered by Ex.P10. For Ex.P11-cheque when presented returned dishonoured even outcome of stop payment, it is within the meaning of the provisions of the Act and even after dishonour when statutory notice issued for any dispute of not served when shows unclaimed from the presumption under Section 27 General Clauses Act of due service available therefrom it is of deemed

service and also held in this regard by the Three Judge Bench in **C.C. Alavi Haji Vs. Palapetty Muhammed**¹⁰ to said conclusion for not even after filing of the private complaint case taken cognizance and service of summons accused not chosen to pay the said cheque amount, even the sale agreement mentioned with reference to compromise in the statutory notice when it is clear of the cheque issued for Rs.5,00,000/- returned dishonoured in which demand to pay also if other amounts mentioned the notice no way invalid therefrom as rightly concluded by the Courts below.

13. Having regard to the above and there is no oath against oath and there is no evidence in rebuttal and Exs.P10 and P11 with reference to Ex.P1 not in dispute, the Courts below are right in finding the accused guilty and for this Court while sitting in revision against that concurrent finding of guilt concerned there is nothing to interfere.

14. From what is discussed supra so far as sentence of imprisonment with fine/compensation outcome of the fine concerned as referred supra, to sub serve the ends of justice it is just to modify from sentence of 6 months simple imprisonment with fine of Rs.10,000/-, to imprisonment till rising of the day by giving set off to the period undergone if any and fine of Rs.10,00,000/- of which Rs.50,000/- goes to the State and Rs.9,50,000/- as compensation to the complainant which includes Rs.10,000/- fine if paid to adjust and out of it in compensation received by complainant, for the balance to pay or deposit within one month from today failing which with default sentence of 6

¹⁰ (2007) 6 SCC 555

months simple imprisonment for the lower Court to levy under Section 421 Cr.P.C. and enforce it.

15. Accordingly and in the result, the criminal revision case and Crl.R.C.M.P.Nos.1708 & 1709 of 2016 are allowed in part.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 18.04.2017

Note: L.R. Copy to be marked

(B/o)

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