HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2820 of 2015

ORDER:

The revision petitioner is the accused in C.C.No.62 of 2014 (old C.C.No.975 of 2013) on the file of VI Special Magistrate, Hyderabad. It is outcome of private complaint for the offence under Section 138 of Negotiable Instruments Act (for short 'the Act') maintained by the revision 1st respondent-complainant. It is for dishonour of Exs.P1 to P3 i.e., 3 cheques bearing Nos.386661 to 386663 dated 30.05.2013 respectively from those presented returned dishonoured covered by Ex.P4 and for the legal notice given under Ex.P5 acknowledged under Ex.P7 and further legal notice and subsequently Memorandum of Undertaking and promissory notes executed for the respective amounts earlier to it and for pro-note amounts and MOU, the cheques in question said to be issued for the amounts paid reflected in the bank accounts under Exs.P13 and P15 and PWs.1 & 2 oath safed from and no other evidence from the accused from not came to witness box but for contest by cross examination with reference to the above convicted the accused by judgment dated 29.09.2014 by finding him guilty to undergo rigorous imprisonment and to pay compensation of Rs.27,55,000/- which reflects for the 3 cheques representing the total amount. The accused unsuccessfully impugned the trial Court's judgment vide appeal dismissal judgment dated 13.11.2015 confirming the same and present revision is maintained against that judgment.

The contentions in the grounds of revision vis-à-vis the oral submissions of the learned counsel for the revision petitioner/accused are that the judgments of the Courts below are contrary to law, weight of evidence and probabilities of the case and ill-appreciation of the provisions of law with reference to the facts and in ignorance of complainant and accused are co-brothers and their wives are own sisters and it outcome of that relationship the cheques were obtained and misused and the 1st payment shown on 02.06.2011 of Rs.10,00,000/- and nine months thereafter the alleged lending on 27.03.2012 of another amount of Rs.12,40,000/- and four months thereafter on 05.07.2012 another sum of Rs.5,15,000/- that too with no document, but for the alleged subsequent obtaining of pro-notes and the undertaking letter and for the so called subsequent obtaining of cheques are a created story by fabricating and once that is the contention no presumptions are available in favour of the complainant for the trial Court and the lower appellate Court to draw and thereby there is no cheque in question issued by accused much less any legally enforceable debt much less supported by pro-note and undertaking letter and the conviction judgments are liable to be set aside.

Whereas it is the submission of the learned counsel for the respondent No.1/complainant that the concurrent findings of the Courts below within the limited scope for this Court while sitting in revision there is practically nothing to interfere, hence to dismiss the revision.

Heard and perused the material on record.

From perusal of the material on record with reference to the evidence supra there is no reply given by the accused to the said legal notice even acknowledged and even those referred to the pro-notes and undertaking letter of 2013 in the respective notices of 18.07.2013 & 20.12.2013. so far as 18.07.2013 there is acknowledgment dated 24.07.2013 and the non-giving of reply as per the expression of the Apex Court in **Rangappa Vs. Sri Mohan**[1] particularly from Para 15 leads to draw adverse inference and as held by this Court in **Chapala Hanumaiah Vs. Kavuri Venkateshwarlu**[2] of non giving of reply leads to adverse inference that no prudent person would keep quiet without reply had there been any defence, but for silence from the truth of contents with no defence so to draw under Sections 3 & 114 of the Indian Evidence Act apart from there is practically no disputes on the signatures on the cheques in question and once such is the case for the cheques routed from the account of the accused and bears signature and even outcome of relationship and there is no worth explanation how the cheques from the account of accused went to the hands of the complainant, leave about the earlier pro-notes and the undertaking letter and when the account statement reflects the transactions and the evidence on record supports to it there is presumption available under Section 118 and also under Section 139 of the Act as held in **Rangappa** Supra there is no worth defence much less to draw by preponderance of possibilities from the reverse onus clause burden lies on the accused in rebutting the same as rightly concluded by the Courts below.

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[1] (2010) 11 SCC 441
[2] 1971 (1) An.W.R. 65

In so far as compensation and enhancement of sentence concerned, the complainant placed reliance on the expression of the Apex Court in **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. Sunil & Company Vs. D.Srinivasavaradan**[4] 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

[3] (2012) 1 SCC 260
[4] (2014) 16 SCC 32

Magistrate imposed till rising of the day and payment of the amount.

The other decision referred is of the Three Judge Bench in **Damodar S.Prabhu Vs. Sayed Babalal**[5] 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. Utpal Basu Mallick**[6] 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.

Here the cheques in question as referred supra are for Rs.27,55,000/- dated 30.05.2013. 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

[5] 2010 (5) SCC 663
[6] 2013 (16) SCC 465

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.

Here from the series of expressions, 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** and also **S.R. Sunil & Company** 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.

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 rigorous imprisonment & compensation of Rs.27,55,000/-, to imprisonment till rising of the day by giving set off to the period undergone if any and fine of Rs.40,00,000/- of which Rs.1,00,000/- goes to the State and Rs.39,00,000/- as compensation to the complainant to pay or deposit within two (02) months from today, failing which with default sentence of 6 months simple imprisonment for the trial Court to levy under Section 421 Cr.P.C. and enforce it.

Accordingly and in the result, the criminal revision case is allowed in part.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 26.04.2017
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