

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.181 of 2017

ORDER :

This revision is maintained by the accused against the modified appellate Court's judgment dated 20.10.2016 in Criminal Appeal No.304 of 2015 on the file of the learned VIII Additional District & Sessions Judge, Vijayawada.

2. The C.C.No.11 of 2015 is an outcome of a private complaint, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), maintained by the revision 1st respondent/complainant against the revision petitioner/accused. The trial Court after taken cognizance, supply of copies and after examination under Section 251 Cr.P.C. from conducting of trial, from the evidence on record of PW.1, DWs.1 and 2, Exs.P1 to P10 and Exs.X1, X2 and Ex.D1, found the accused guilty for the offence under Section 138 of the Act, by judgment dated 07.10.2015, in sentencing to undergo six months Simple Imprisonment and also to pay a fine of Rs.20,00,000/- in default Simple Imprisonment for six months and out of the fine amount of Rs.20,00,000/-, ordered to be paid as compensation to the complainant of Rs.18,50,000/- for the alleged Ex.P1-cheque of Rs.15,00,000/-, modified by the lower appellate Court to only fine of Rs.5,00,000/- with default sentence of 15 days, by ordering the amount of fine to be

payable as compensation to the complainant. The trial Court findings on guilty of the accused for the offence under Section 138 of the Act confirmed by the lower appellate Court but for on the quantum of sentence instead of six months Simple Imprisonment and compensation/ fine of Rs.20,00,000/- modified only to fine of Rs.5,00,000/-.

3. It is the submission of the learned counsel for the revision petitioner/ accused that there is out of Court settlement in a civil matter including for the civil suit claim in O.S.No.1070 of 2008 covered by E.P.No.557 of 2015 on the file of the Principal Senior Civil Judge, Vijayawada, totally for Rs.4,80,000/- and the same is paid outside the Court, thereby, the Criminal Revision Case is permitted to be withdrawn.

4. As per Damodar S.Prabhu Vs. Sayed Babalal¹, a three Judge bench Judgment of the Apex Court, in Negotiable Instruments cases, for compounding the offence, even under Section 147 of the Act, compounding fees is being payable. Here, the accused wants to undergo, if at all to impose any sentence of imprisonment till raising of the day or to pay fine, to impose for the matter already connected with civil suit settled outside the Court and not particular but for including this case.

5. Having regard to the above, as the complainant stated received the amount from the accused and passed the receipt by taking lenient view of the subsequent payment of the cheque

¹ 2010 (5) SCC 663

amount till raising of day and fine of Rs.25,000/- to go to the State is imposed.

6. Accordingly, the Criminal Revision Case is disposed of, directing the lower Court to secure the revision petitioner/ accused to undergo the sentence of imprisonment till raising of the day and to recover the fine amount of Rs.25,000/- to go to the State.

7. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:27-02-2017

Note:

Issue C.C. in two days.

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