

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CRIMINAL REVISION CASE No.1794 of 2006****ORDER:**

This Criminal Revision, under Sections 397 and 401 Cr.P.C. is filed questioning the propriety and legality of the Judgment dt.22.07.2004 in C.C.No.265 of 2004 passed by VII Additional Munsif Magistrate, Guntur, finding the accused guilty for the offence punishable under Section 138 of NI Act and sentenced to undergo SI for a period of Six Months and to pay a fine of Rs.5,000/- with default clause while giving set off to the remand period, if any, but the Appellate Court confirmed the fine amount of Rs.5,000/- while setting aside the imprisonment of RI for Six months, and further directed to pay compensation of Rs.1,25,000/- i.e., half of the cheque amount, to the complainant.

The petitioner being aggrieved by the conviction and sentence passed under the Calendar and Judgment in C.C.No.265 of 2004, preferred an appeal in CrI.A.No.317 of 2004 before District and Sessions Judge, Guntur, but the Appellant Court confirmed the fine amount of Rs.5,000/- with default clause while setting aside the imprisonment of RI for Six months and further directed to pay compensation of Rs.1,25,000/- to the complainant.

Being aggrieved by Judgment of Appellate Court, the petitioner/complainant filed the present revision on the ground that the sentence of imprisonment imposed by the Court below i.e., Appellate Court, is not commensurate with the gravity of the offence and committed a grave error in converting the sentence of imprisonment into fine while directing the accused to pay

compensation of Rs.1,25,000/- ie., half of the amount, to the complainant erroneously.

Sri Mokkapati Prabhakara Rao, learned counsel, who filed vakalat on behalf of petitioner/accused, did not appear and represent the matter. But, this Court cannot dismiss the Criminal Revision for default, the Court can decide the revision after verifying the material available on record as per the Judgment reported *Misha Sharma v. Vinod Kumar Sharma*¹, wherein it is made clear that a revision petition cannot be dismissed for default and even if the petitioner or his advocate does not appear, the court shall examine the record and decide the revision on merits.

Persuaded by the law declared by the Delhi High Court, I would like to proceed with the matter, verifying the material available on record.

The petitioner filed the complaint before the Magistrate against the respondent/accused for the offence under Section 138 NI Act. Both the trial Court and the Appellate Court found the accused guilty for the offence under Section 138 of NI Act. The trial Court sentenced the respondent/accused to suffer RI for a period of Six months and also pay a fine of Rs.5,000/- with default clause, whereas, the appellate Court confirmed the fine of Rs.5,000/- with default sentence while setting aside the sentence to suffer RI for a period of six months and further directed to pay compensation of Rs.1,25,000/- to the complainant. Setting aside the sentence of imprisonment while confirming the fine amount and directed the accused to pay

¹ 1990 Cr.LJ. (NOC) 57 (Del.)

compensation to the complainant is challenged on the ground that the sentence imposed by the Appellate Court is not commensurate with gravity of the offence.

The offence under Section 138 NI Act is punishable with imprisonment with a term which may extend to 2 years or with fine which may extend to double amount of the cheque or with both. Thus, the discretion is vested on the Court to impose either imprisonment for a term which may extend to 2 years or with fine or with both. In such a case, the Appellate Court exercised its discretion and awarded compensation while confirming the fine by setting aside the substantive sentence of imprisonment.

In *Suganthi Suresh Kumar v Jagdeeshan*², an identical issue came up for consideration, where the accused found guilty and was convicted for the offence punishable under Section 138 of N.I.Act, but sentenced him only till rising of the Court and pay a fine of Rs.5,000/-, but the respondent approached the High Court as the sentence imposed by the trial Court is grossly inadequate. But the High Court also did not interfere with the sentence imposed by the trial Court, the Apex Court while considering the amount covered by the cheque as Rs.4,00,000/-, concluded that if the amount covered by the cheque was paid to the complainant, either during pendency of the case before the High Court or before the Supreme Court, 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 Court that the sentence for the offence under Section 138 of N.I.Act 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

² (2002) SCC 420

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 Court and remitted the matter to the Court below to impose appropriate punishment in commensurate with the gravity of the offence.

But, in the present facts of the case, the amount involved in this case is Rs.2,50,000/- and the trial Court after full fledged trial convicted and sentenced the accused to undergo SI for a period of Six Months and to pay a fine of Rs.5,000/- with default clause, but the Appellate Court while confirming the fine amount set aside the substantive sentence of imprisonment and directed the respondent/accused to pay compensation of Rs.2,50,000/-. The discretion exercised by the Appellate Court is in consonance with the mandate under Section 357(3) Cr.P.C. Therefore, the sentence imposed by the Appellate Court is not flee-bite sentence and it is commensurate with the gravity of the offence. The sentencing policy does not lay down any specific guidelines, but while imposing sentence, the Court has to take into consideration the mitigating and aggravating circumstances and the Appellate Court, after taking into consideration the above said circumstances, imposed such sentence and it is commensurate with the gravity of the offence, which cannot be termed as flee-bite sentence. Therefore, I find no ground to interfere with the sentence imposed by the appellate Court, in view of the limited jurisdiction that conferred on this Court while exercising power under Sections 397 and 401 Cr.P.C. and consequently, the revision is liable to be dismissed as it devoid of merit. However, the Court committed an error in imposing default sentence, since

compensation amount shall be collected by way of fine under Section 421 cr.P.C.

Accordingly, this Criminal Revision Case is dismissed.

Consequently, miscellaneous applications pending, if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:12.10.2017
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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