

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2919 of 2015

ORDER :

Earlier this Court instead of disposing of the application to letter of withdrawal disposed of mistakenly the main revision not on merits. In fact, it is only an order in the revision rejecting the memo for nonpayment of compounding fees and non-filing of application to compound invoking Section 147 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

2. Having regard to the above, the earlier order dated 27.04.2017 is confined to the rejection of the memo and the revision is restored to file for all practical purposes under section 482 Cr.P.C.

3. Heard both sides.

4. In the revision the revision petitioner is the accused in C.C.No.1 of 2013 re-numbered from C.C.No.459 of 2011 and the learned III Special Magistrate, Hyderabad, by judgment dated 28.10.2013 convicted the petitioner/accused for the offence under Section 138 of the Act to under to simple imprisonment for six months and to pay fine of Rs.5,000/- with default sentence of one month and the petitioner/accused unsuccessfully maintained Crl.A.No.933 of 2013 by confirmation of the trial Court's judgment by dismissal of the appeal on 24.11.2015. It is impugning the same, the revision is maintained.

5. There is already for recovery of the amount covered by the cheque. There was civil suit in O.S.No.130 of 2013 which is for a

total claim to recover Rs.8,19,678/- that was decreed on 22.07.2014 and E.P.No.55 of 2015 shown filed. At that stage, as per the certified copy issued by the City Civil Court, Secunderabad, from the file of the III Additional Senior Civil Judge, City Civil Court, Secunderabad in E.P.No.55 of 2015 in O.S.No.130 of 2013, from the joint compromise memo filed by decree-holder and the judgment-debtor recorded with 9 terms, of which term No.1 speaks of what is referred supra and there was attachment of salary of the judgment-debtor and so far Rs.1,04,400/- as per condition No.2 by then deducted and is lying in Court deposit and decree-holder agreed to receive Rs.4,00,000/- by way of D.D.No.027001, dated 26.10.2016, drawn on Andhra Bank, Habsigda, and also to withdraw the deposited amount lying in civil Court deposit supra, total comprising Rs.5,04,400/-, in full settlement and as per the decree, retirement benefits of Rs.7,15,278/- of the judgment-debtor withheld by the Department of Railways is to be released forthwith and so far as the criminal case concerned to withdraw.

6. Withdrawal is a mistaken out come as if the revision is permitted to be withdrawn the conviction judgment of the trial Court confirmed by the lower appellate Court holds good and it is not withdrawn since no compounding fees paid to compound, thereby taken up from the arguments of both sides to decide on merits.

7. In the factual background heard both sides and perused the concurrent findings of the Courts below and the grounds urged in the

revision. A perusal of the trial Courts judgment confirmed by the lower appellate Court no way requires any interference so far as finding of guilt for the offence under Section 138 of the Act concerned, but for to say as per the expression of the Apex Court in **Somnath Sarka v. Utpal Basu Mallick**¹ as it is not the endeavour including of the compromise terms and the submission by the counsel for the respondent/complainant to the revision to see that the accused shall go to jail, but for recovery of the amount and it is for the cheque amount also covered by the civil suit undisputedly by modifying the sentence of imprisonment of six months with fine to only fine of the cheque amount of Rs.2,08,000/- by granting two months to pay and if at all already paid in the civil suit in relation to it, which is out come of full settlement for Rs.5,04,400/- file proof before the learned Magistrate to record full satisfaction else the respondent/complainant can execute and enforce under Section 431 read with 421 Cr.P.C.

8. Accordingly, the revision is allowed in part.

Miscellaneous petitions pending, if any, shall stand closed.

9th April 2019

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Dr. B. SIVA SANKARA RAO, J

¹ 2014 (1) ALT Crl. 145