

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2477 OF 2016

ORDER:

The accused is the revision petitioner. The 1st respondent to the revision is the complainant in C.C.No.123 of 2015, which is outcome of a private complaint for dishonor of the cheque Ex.P.2, dated 20.01.2014, for Rs.5,00,000/- said to have been issued by the accused in favour of the complainant and when presented, returned dishonored by the Exs.P3 and P4 and notice under Ex.P5 issued, that was acknowledged under Ex.P6 for no reply and no payment from the approval of cause of action, the complaint case filed and after sworn statement recorded taken cognizance and from examination under Section 251 Cr.P.C., when denied the commission of offence put to trial and from the evidence of P.Ws.1 to 3, with reference to Exs.P1 to P6 supra, including Ex.P1 pro note for Rs.4,50,000/- dated 17.09.2013 as a legally enforceable debt for which the cheque said to have been issued and from no dispute by accused of the cheque routed from her account and bearing her signature but for otherwise from the presumption under Section 118 and 139 N.I. Act available in favour of the complainant for discharge of burden on the accused under reverse onus clause as laid down by the Apex Court in

Rangappa Vs. Mohan¹ including from Para 15 of non-giving of reply also one of the considerations leave about the conduct in not giving of reply by non-denying the allegations to the statutory notice, to draw inference for no prudent man would keep quiet under Section 3 r/w 114 of Evidence Act.

2. As laid down by this Court in **Chapale Hanumayya Vs. Kavuri Venkateswarlu**², from no evidence from the accused much less by coming to witness box when the trial court found the accused guilty rightly, for accused could not even discharge the burden to rebut the presumptions including from any worthy cross examination of P.Ws.1 to 3 as concluded and confirmed by the lower Appellate Court. So far as the finding of guilt concerned, for this Court while sitting in revision there is nothing to interfere.

3. However, coming to the sentence of imprisonment of six months with compensation of Rs.5,00,000/- with interest at 9% imposed by the trial court from the date of cheque 20.01.2014 vide the conviction judgment dated 16.09.2015 that was on the appeal by the accused, the lower appellate court while confirming the sentence of imprisonment however enhanced the 5 lakhs compensation to 10 lakhs though there is no independent appeal by the complainant on insufficiency of quantum of sentence or compensation or fine as the case may be, vide appeal judgment dated 07.09.2016, in

¹ (2010) 11 SCC 441 (3JB)

² [1971 (1) Andhra Weekly reporter, Page 65]

CrI.A.No.331 of 2015, the appellate court could not have the right to enhance the sentence that too for not a modification reducing the imprisonment.

4. Now coming to the just compensation vis-à-vis the sentence concerned, it is not even the submission made by the learned counsel for the complainant that his endeavor is to see that the accused be sent to gallows, but for to recover his amount with reasonable interest and by considering the same from request of revision petitioner to impose fine rather imprisonment and following the expression of the Apex Court in **Somanath Sarka Vs. Utpal Basu Mallick**³, the sentence of six months imprisonment is just to reduce by modifying to one day imprisonment till raising of the day and by converting the compensation of Rs.5 lakhs awarded by the trial court and modified to Rs.10 lakhs by the lower appellate court held as not sustainable supra to a fine of Rs.8 lakhs as per Section 138 r/w 143 of the amended N.I.Act and out of which Rs.30,000/- shall go to State and remaining as compensation to the complainant.

5. Accordingly and in the result, these revisions are partly allowed. The complainant is permitted to withdraw Rs.2,70,000/- (out of the 3 lakhs in deposit made by accused for the trial Court to remit the balance of Rs.30,000/- to the State) and for the balance if the accused failed to pay within

³ 2014 (1) ALT CrI. 145

one month from date of receipt of the copy of the order, to enforce under Section 421 r/w 431 Cr.P.C.

6. Accordingly, these revision petitions are dismissed. Miscellaneous petitions pending, if any, in this case shall stand closed.

DR.B.SIVA SANKARA RAO,J

16.03.2017
SS

