

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.1719 of 2017

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C questioning the legality, propriety and regularity of the order dated 27.02.2017 in Crl.A.No.231 of 2015 passed by the XIII Additional Sessions Judge, Narsaraopet confirming the judgement dated 23.03.2015 in C.C.No.200 of 2012 passed by the Principal Junior Civil Judge, Narasaraopet, finding the accused guilty for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and sentencing him to pay fine of RS.5,000/- to meet the ends of justice and in default to undergo simple imprisonment for six months.

The only grievance of the revision petitioner/complainant is that the sentence imposed by the trial Court is flea-bite sentence and not commensurate with the gravity of the offence and against the object of the enactment of Section 138 of Act. Therefore, requested this Court to impose substantive sentence of imprisonment and award compensation by following Section 357 Cr.P.C. A similar question came up for consideration before the Apex Court in **Suganthi Suresh Kumar v Jagdeeshan**¹. While deciding sufficiency of sentence imposed by the Courts for the offence punishable under Section 138 of the Act, the Apex Court held that the sentence imposed by the trial Court is flea-bite sentence and it is not commensurate with the gravity of the offence and imposition of such sentence would frustrate the very intention of the litigation and remanded the matter to the trial Court to impose proper punishment commensurate with the gravity of the offence. In view of the

¹ (2002) SCC 420

Judgment, if the punishment imposed by the Court below is flea-bite, the Court can direct the High Court or Subordinate Courts to impose proper punishment. In the facts of the above judgment, the cheque amount was Rs.4 lakhs, but the Court imposed substantive sentence till rising of Court. Such sentence was described as flea-bite sentence and set aside the same directing the trial Court to impose proper punishment, taking into consideration of the amount involved in the cheque and other circumstances.

In the present case, the cheque amount was Rs.70,000/- and the trial Court imposed sentence of fine of Rs.5,000/- and even according to Section 138 of the Act sentence prescribed for the offence punishable is imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both. Therefore, the fine of Rs.5,000/- imposed by the trial Court with default sentence is in terms of Section 138 of the Act. Merely because, the discretion is vested to award compensation more than twice the amount covered by the cheque, the Court cannot be insisted to impose fine more than the cheque amount so as to pay the same by way of compensation.

On the other hand, the trial Court imposed such sentence of fine of Rs.5,000/- and placed reliance in **Kaushalya Devi Massand v Roopkishore Khore**² In the said judgment, the trial Court imposed sentence by exercising discretion taking in to consideration of mitigating and aggravating circumstances. In such a case, this Court cannot interfere with the sentence imposed by the trial Court since it is commensurate with the gravity of the offence and imposition of fine is in accordance with Section 138 of the Act. Therefore, I find no grounds to interfere with the sentence imposed by the trial Court and consequently, the revision case is liable to be dismissed.

² (2011)3 SCR879

Accordingly, the criminal revision case is dismissed at the stage of admission.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 11.10.2017
kvrn

