

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2266 of 2016

ORDER:

Heard both sides and perused the impugned order of the learned Sessions Judge dated 23.08.2016 in CrI.M.P.No.689 of 2016 in an un-numbered Criminal Appeal, dismissing the application to condone the delay of 256 days, filed by the accused/appellant.

The cheque in question was for Rs.6,40,500/- dated 07.05.2014, said to have been issued by the accused. The trial Court, after contest, convicted the accused vide judgment dated 04.06.2015 in C.C.No.68 of 2015 on the plea of guilty by the accused during his examination under Section 251 Cr.P.C., within the discretionary power of the Court under Section 252 Cr.P.C., in convicting him and sentencing to pay a fine of Rs.6,40,500/- with default sentence of six months, by granting time of four months for such payment. No doubt, the appeal is maintainable only to the limited purpose on the legality and correctness of the sentence as contemplated by Section 375 (b) Cr.P.C.

2. The Negotiable Instruments Act, 1889 amended by Act 55 of 2002 with effect from 06.02.2003, amending Section 143 says notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said

Code shall, as far as may be, apply to such trials. Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees. The further provision reads that Provided further that if the Magistrate feels the sentence above one year imprisonment to be passed or for any other reasons undesirable to try the case summarily, he shall, after hearing the parties, record an order to that effect and recall any witness already examined and proceed to hear or rehear the case in the manner provided. It is because under Section 262 Cr.P.C., the procedure specified for trial of summons case shall be followed except as specifically mentioned in chapter 21 for summary trials. So far as summons case is concerned, it is in chapter 20. Out of Sections 251 to 259 Cr.P.C., Section 259 Cr.P.C., empowers the Court to convert summons case into warrant case.

3. The case on hand is tried as C.C.No.68 of 2015 and not as Summary Trial Case (STC). However, the provision speaks, in case of trial, sentence of imprisonment shall not exceed one year, but fine of above Rs.5,000/- may be imposed and the section starts with non obstante clause, to say irrespective of what is contained in Section 29 Cr.P.C; even after amendment to Section 29(2) Cr.P.C., with which we are now concerned, whereunder upto Rs.10,000/- maximum fine the Magistrate can impose, which is to say, however, under Section 143 of the Act, fine of above Rs.10,000/- even the Magistrate can

impose. However, the wording says imprisonment and fine, from the use of the word “and”.

4. In the judgment, the learned Judge did not impose any sentence of imprisonment at least till raising of the day, but for only fine of Rs.6,40,500/-, though the judgment dated 04.06.2015 is subsequent to the amendment, by Act 55 of 2002, referred supra. To that extent, on legality of the sentence, the appeal is maintainable, though much argument raised by the learned counsel for the respondent-complainant on maintainability of the appeal under Section 375 Cr.P.C.

5. In view of the same, coming to the correctness of the dismissal of the delay condonation application of 256 days is concerned, law is fairly settled by catena of expressions that nobody wantonly withhold from filing of appeal to pursue a legal right against an adverse result, but for some or other cause therein to consider with the pragmatic approach required in considering of just cause shown or deliberately kept quiet. Here, there is an explanation including from the discussion in the impugned order of the lower Court for considering at best by imposing costs.

6. Having regard to the above and in the result, the revision is allowed and the dismissal order of the court below is set aside and the petition is consequently allowed, subject to costs of Rs.10,000/- (Rupees Ten Thousand only) by allowing application to condone the delay in directing the lower Court to number the appeal if otherwise in

order which is subject to condition that, out of Rs.10,000/- costs supra, Rs.4,000/- is payable to the counsel for respondent No.2, since paid in open Court and received and remaining Rs.6,000/- to pay within one week from the date of receipt of this order, before the Superintendent concerned, of the lower appellate court, so as to send the same to any Government-owned orphanage within the District or within the State, as the case may be and place proof of sending with initial of the Presiding Officer on record.

Miscellaneous petitions if any pending in the revision stand closed.

March 21, 2017
MRR

Dr. B. SIVA SANKARA RAO, J

