

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL R.C. NO.392 OF 2005

ORDER:

This criminal revision case is filed under Sections 397, 401 of Cr.P.C. challenging the order, dated 05.01.2005 in C.C.No.437 of 2000 passed by the XXIII Metropolitan Magistrate, Hyderabad and imposing sentence of six months against 2nd respondent/A-2 and fine of Rs.2,000/- in default to suffer simple imprisonment for two months while refusing to impose sentence against 1st respondent/A-1 which is a Company and allegedly closed by date of pronouncing the order.

2. The petitioner herein filed a complaint under Section 200 Cr.P.C. against the respondents for the offence under Section 138 of Negotiable Instruments Act. The 1st respondent is the company and the 2nd respondent is the Director of the Company. The trial Court believing the evidence on record, found respondents 1 and 2/A-1 and A-2 guilty for the offence punishable under Section 138 r/w 142 of Negotiable Instruments Act and sentenced 2nd respondent/A-2 who is the Director of the Company alone while not imposing any sentence against first respondent company/A-1 which was allegedly closed by the date of the impugned judgment.

3. Aggrieved by the order passed by the trial Court, the present revision case is filed challenging propriety, legality and regularity of the order dt. 05.01.2005 passed by the XXIII Metropolitan Magistrate, Hyderabad in C.C.No.437 of 2000 for not imposing sentence against

the first respondent company/A-1 and enhancement of sentence against 2nd respondent/A-2 and not granting compensation in favour of the petitioner on various grounds, mainly contending that when Company was closed, the court cannot refuse to impose sentence of fine only, but without recording any reason, the trial court did not impose any sentence against the first respondent on the mere statement of A-2 without any material. Therefore, the order passed by the trial Court against A-1 not imposing any sentence is illegal. The petitioner also requested to enhance the sentence of imprisonment against A-2 and for grant of compensation.

4. During hearing, the learned counsel for petitioner reiterated the contentions raised before this Court. However, the scope of revision under Section 397 r/w 401 of Cr.P.C. is limited and this Court at best can test the order whether it is legal and if the trial Court recorded any finding without any evidence or a perverse finding, the court may interfere with such finding while exercising power under Section 397 r/w 401 Cr.P.C. Here, the trial court did not impose sentence against A-1, the first respondent herein only basing on the oral statement of 2nd respondent/A-2 who is the director of the Company. Failure to impose any sentence against A-1 on the statement of the second respondent-director is an illegality and if there is any material evidencing closure of the company, the order passed by the trial Court can be sustained. But, here the failure of the trial Court to impose any sentence on 1st respondent A-1 without any material is a serious illegality and in such a case, this court can interfere with the order passed by the trial Court. Even before this

Court, no appearance is made, though notice is served and no material is produced to establish the closure of the company i.e. first respondent/A-1. In such a case, it is difficult to accept the contention of the second respondent/Director of the company with regard to closure of the company. However, the company is only a juristic personality and no sentence of imprisonment can be passed against it, but fine can be imposed when the Court found guilty on the company guilty for the offence punishable under Section 138 r/w 142 of Negotiable Instruments Act. Therefore, I find that it is a fit case to impose fine of Rs.2,000/- on 1st respondent/A-1 and in case the first respondent company fails to pay fine amount, the trial court can recover the said amount according to the procedure contemplated under Criminal Procedure Code.

5. The petitioner also claimed compensation, but it is the discretion of the court to award such compensation when fine is imposed and that apart, enhancement is also not permissible since minimum sentence is imposed by the trial Court. Hence, I find no ground either to award compensation or for enhancement of punishment against the second respondent. Consequently, the criminal revision case is allowed in part sentencing the first respondent company to pay fine of Rs.2,000/- permitting the trial Court to recover the fine amount in case not paid, according to the procedure.

6. With the above modification, the criminal revision case is disposed of.

Miscellaneous petitions, if any, pending in this case shall stand closed.

M.SATYANARAYANA MURTHY,J

DATE:31-07-2017
ccm



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