

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.1015 of 2005

ORDER:

This petition is filed under Sections 397 and 401 Cr.P.C. questioning adequacy of sentence vide order dated 06.04.2005 passed by XXIII Metropolitan Magistrate, Hyderabad in C.C.No.1047 of 2001, against respondent No.1 finding him guilty for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The petitioner filed a private complaint under Section 200 Cr.P.C. and after full-fledged trial, the trial Court found respondent No.1 guilty for the offence under Section 138 of N.I.Act, imposed sentence of fine of Rs.3,000/-, in default S.I for one month.

3. In the present revision, the question is only with regard to adequacy of sentence imposed against the 1st respondent when the cheque was for Rs.43,297/-, which was dishonoured on its presentation by the petitioner herein.

4. Learned counsel for the petitioner contended that the sentence imposed by the trial Court against the 1st respondent is flea-bite sentence and not commensurate with the gravity of the offence and against the object of the enactment of Section 138 of N.I.Act and prayed to set aside the order.

5. During hearing, learned counsel for the petitioner would draw the attention of the judgment of the Apex Court in **Suganthi Suresh Kumar v Jagdeeshan**¹ and judgment of this Court in **Krutti Venkata Apparao v Kaki Uma Shankara Rao and another**².

¹ (2002) SCC 420

² 2003(1) ALD (CRL.) 822 (AP)

6. The trial Court having found that the accused guilty for the offence punishable under Section 138 of N.I.Act, admittedly imposed fine of Rs.3,000/-, though the amount covered by the cheque was Rs.43,297/- and the fine imposed by the trial Court is not commensurate with the gravity of the offence. Therefore, the sentence imposed by the trial Court is inadequate ex facie.

7. The sentencing procedure adopted by the trial Court is not in accordance with law, as it is not in consonance with the object of the enactment to issue of cheque without sufficient funds and getting dishonour for one reason or the other. For imposing sentence, the Court must take into consideration the following mitigating and aggravating circumstances. The Mitigating circumstances are (1) the manner and circumstances in and under which the offence was committed, for example, mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course. (2) the age of the accused is relevant consideration, but not alone determinative factor by itself. (3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated. (4) The condition of the accused, whether he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct. (5) The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent. In one of the judgments of the Apex Court, which learned counsel for the petitioner relied on **Suganthi Suresh Kumar's** case referred supra an identical issue came up for consideration, where the accused found guilty of the offence convicted him for the offence punishable under Section 138 of N.I.Act, but sentenced him only to stand till rising of the Court and pay a fine of Rs.5,000/-. The accused

happy with the punishment, but the respondent approached the High Court as the sentence imposed by the trial Court is grossly inadequate. But the High Court also did not interfere with the sentence imposed by the trial Court, but the Apex Court while considering the amount covered by the cheque as Rs.4,00,000/-, concluded that if the amount covered by the cheque was paid to the complainant, either during pendency of the case before the High Court or before the Supreme Court, there perhaps would have been justification for imposing a flea-bite sentence, as had been chosen by the trial Court. But in a case where the amount covered by the cheque remained unpaid, it should be the lookout of the trial Court that the sentence for the offence under Section 138 of N.I.Act should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Court.

8. On an identical question came up before this Court in **Krutti Venkata Apparao**'s case referred supra this Court remanded the matter to the trial Court for imposing proper sentence. In view of the law declared by the Apex Court and this Court, the matter has to be remanded to the trial Court for imposing proper sentence, commensurate with the gravity of the offence, taking into consideration of the amount involved in the matter. In those circumstances, this Court has no other option except to remand the matter to the trial Court strictly adhering to the directions issued by the Apex Court and this Court in the above two decisions referred supra.

9. Therefore, the matter is remanded to the trial Court without disturbing conviction but setting aside the sentence imposed by the trial

Court i.e. fine of Rs.3,000/- having found the accused guilty for the offence punishable under Section 138 of N.I.Act and directing the trial Court to impose proper sentence in accordance with law commensurating with the gravity of the offence.

10. With the above direction, the revision case is disposed of.

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

M. SATYANARAYANA MURTHY J

Date: 03.08.2017
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