

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1751 of 2005

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. questioning propriety and legality of order, dated 27.07.2005 passed by III Additional Judicial First Class Magistrate, Tirupati, in C.C.No.324 of 1999, convicting respondent No.1 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and sentencing him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.5,000/- besides imposing compensation of Rs.30,000/- with default sentence.

Petitioner/complainant having dissatisfied with the sentence imposed upon respondent No.1, filed this revision on various grounds, mainly contending that the Court below imposed a flea-bite sentence upon respondent No.1 and same is not commensurate with the gravity and seriousness of offence and that the amount involved is Rs.60,000/-, as such, appropriate sentence is to be imposed by this Court in exercise of power under Sections 397 and 401 Cr.P.C.

During hearing, main contention of counsel for petitioner/complainant is that petitioner incurred expenditure for referring Ex.D.4 to hand writing expert to disprove that the signatures on it are not that of her and in the circumstance, imposing sentence for a period of six months and fine of Rs.5,000/- besides awarding compensation of Rs.30,000/- is bear minimum and therefore, the Court has to impose appropriate sentence, taking into consideration the seriousness and gravity of offence. He placed reliance on the judgment of Apex Court in **Suganthi Suresh Kumar v. Jagdeeshan**¹.

Counsel for respondent No.1 contended that while imposing fine, awarding compensation is contrary to Section 357(3) Cr.P.C. and therefore, both compensation and fine cannot be imposed by the Court. However, no appeal/revision is filed questioning imposition of fine and awarding compensation by the Court below, and he requested this Court to appropriate sentence upon respondent No.1 keeping in mind Section 357(3) Cr.P.C.

In the present case, the amount covered by Ex.P.1 – cheque is Rs.60,000/- which was dishonoured by the payee bank and was returned along with Ex.P.2 – cheque return memo and thereafter, petitioner had complied with necessary requirement under

¹ 2002(1) ALD (Crl.) 417 (SC)

clause (b) of proviso to Section 138 of the Act to demand the amount covered by Ex.P.1 and respondent No.1 having received the same did not comply with the legitimate demand of petitioner i.e., amount covered by the dishonoured cheque. Therefore, he committed an offence under Section 138 of the Act and the Court below after elaborate consideration of entire material including the opinion of expert to disprove Ex.D.4, which is a document brought into existence to avoid demand of debt covered by Ex.P.1, held that respondent No.1 committed an offence punishable under Section 138 of the Act. This finding is not questioned by either petitioner or respondent No.1 but the only ground raised by petitioner is that the Court below imposed upon respondent No.1, a flea-bite sentence, which is not in commensurate with the seriousness and gravity of offence.

In **Suganthi Suresh Kumar** (supra), though the amount covered by the cheques was Rs.4,50,000/-, the Court imposed a flea-bite sentence of till rising of Court and fine of Rs.5,000/- but the matter carried to the Supreme Court after confirmation of sentence by the High Court, and the Apex Court held that imposing flea-bite sentence is against the intention of the Legislature and if the amounts had been paid to the complainant, 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 look out of the Magistrate that sentence for the offence under Section 138 of the 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 lightheartedly. 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. It is a different matter if the accused paid the amount at least during the pendency of the matter and thereby, the Apex Court remanded the matter to the trial Court for imposing sentence by considering the gravity of offence.

In the present case, the amount covered by Ex.P.1 is Rs.60,000/-, for which, the trial Court convicted respondent No.1 imposing upon him sentence of Simple Imprisonment for six months and fine of Rs.5,000/- besides directing him to pay compensation of Rs.30,000/- to petitioner. Therefore, it is clear that the facts of **Suganthi Suresh Kumar** (supra) are totally different and here, the Court below imposed appropriate sentence upon respondent No.1 taking into consideration the amount covered by the cheque. In such circumstances, this Court while

exercising power under Sections 397 and 401 Cr.P.C. cannot interfere with the sentence imposed upon respondent No.1 by the Court below, by imposing higher punishment.

The contention of counsel for respondent No.1 is that imposition of sentence of fine upon respondent No.1 by the Court below while directing him to pay compensation of Rs.30,000/- to petitioner is contrary to Section 357(3) Cr.P.C. But, this question need not be adjudicated in this matter since no independent appeal/revision is filed.

Therefore, I am not inclined to modify the sentence imposed by the Court below exercising power under Sections 397 and 401 Cr.P.C. Consequently, Criminal Revision Case is liable to be dismissed.

In the result, Criminal Revision Case is dismissed.

Consequently, pending Miscellaneous Petitions, if any, shall stand disposed of.

M. SATYANARAYANA MURTHY, J

13th SEPTEMBER, 2017.

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