

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1387 of 2017

ORDER:

The complainant dissatisfied with the sentence imposed in C.C.No.252 of 2014 by the Special Judicial Magistrate of First Class for Railways, Guntur finding the respondent/accused guilty for the offence under Section 138 of Negotiable Instruments Act (for short "N.I.Act") and sentenced him to undergo simple imprisonment for 3 months without awarding compensation, preferred the Criminal Appeal No.7 of 2016 questioning the quantum of sentence and failure of the trial Court to award compensation to the petitioner, but the criminal appeal was ended in dismissal confirming the conviction and sentence passed by the trial Court in C.C.No.252 of 2014.

Aggrieved by the judgment of the appellate Court, the present revision is filed questioning the propriety, legality and correctness of the orders in not awarding compensation, which is contrary to Section 357 (3) of Cr.P.C. and not in consonance with the provisions of N.I.Act.

None appeared for the respondent No.1 though notice was served.

The main ground urged before this Court is that the judgment of the trial Court and affirmation by the appellate Court is contrary to the principles laid down in the judgment of Apex Court rendered in "**Suganthi Suresh Kumar v.**

Jagdeeshan¹” and the judgment of this Court rendered in ***“Krutti Venkata Appa Rao v. Kaki Uma Shankara Rao”***².

The respondent No.1, though, sentenced to undergo simple imprisonment for three (3) months for the offence punishable under Section 138 of N.I.Act, the petitioner did not challenge the said finding recorded by both the Courts below. Therefore, the finding of the trial Court and affirmation by the appellate Court with regard to commission of offence by the respondent No.1 needs no interference since it is not under challenge.

The only challenge before this Court is that failure of trial Court and appellate Court to award compensation in terms of Section 357 (3) of Cr.P.C.

The maximum punishment prescribed under the Act is imprisonment for two years or with fine or with both, but the compensation is not prescribed as a mode of punishment under the provisions of Negotiable Instruments Act.

Learned counsel for the petitioner would draw the attention of this Court to Section 357 (3) of Cr.P.C., which reads as follows:

“When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.”

¹ AIR 2002 SC 681

² 2004 (1) ALT (Criminal) 31 (AP)

Thus, as per Section 357 (3) of Cr.P.C. the Court shall also award compensation for the loss suffered by the complainant.

In the present case, the complainant suffered loss due to non-payment of the amount covered by the alleged cheque is Rs.6,00,000/- and claim in civil suit if not filed for recovery is barred by limitation on account of pendency of these proceedings, in such case this Court has to award compensation in terms of Section 357 (3) of Cr.P.C.

Learned counsel for the petitioner would draw the attention of this Court to “**Suganthi Suresh Kumar v. Jagdeeshan**” (referred supra), wherein the accused was sentenced to undergo imprisonment without imposing any fine or awarding compensation, but the High Court also confirmed the sentence imposed by the trial Court and when the matter reached the Apex Court, the Apex Court held that imposing punishment of imprisonment till rising of the Court for the offence under Section 138 of N.I.Act is a flee-bite sentence. But in a case where the amount covered by the cheque remained unpaid it should be the look out of the trial Magistrate 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 138 of the Act would stand defeated if the sentence is of the

nature passed by the trial Magistrate. It is a different matter if the accused paid the amount at least during the pendency of the case. However, the matter was remanded for imposing appropriate sentence by taking into consideration of the gravity of the offence.

When an identical question came up before this Court in “**Krutti Venkata Appa Rao v. Kaki Uma Shankara Rao**” (referred supra), this Court held as follows:

“If a person held guilty of an offence under Section 138 of N.I.Act is let off by imposing a fine of paltry amount, it virtually amounts to putting a premium on his misdeeds.”

But the appellate Court considered the judgment in “**Suganthi Suresh Kumar v. Jagdeeshan**” (referred supra) and satisfied with the sentence of simple imprisonment for three (3) months imposed by the trial Court as it is inconsonance with the purport of the Act and grant of compensation is not mandatory. This finding is now challenged before this Court based on “**Suganthi Suresh Kumar v. Jagdeeshan**” (referred supra). The trial Court and the appellate Court did not deal with the loss sustained by the petitioner/complainant for non-payment of the cheque amount of Rs.6,00,000/-. When the cheque amount was not paid, the complainant will be put to loss, in such case he is entitled to claim compensation under Section 357 (3) of Cr.P.C. The appellate Court did not consider the loss suffered by the complainant on account of non-payment of amount

covered by cheques, but simply denied the relief claimed in the appeal making an observation that the facts of “**Suganthi Suresh Kumar v. Jagdeeshan**” (referred supra) are different. This approach is not correct and when the complainant suffered loss, the Court bound to consider the same and award appropriate compensation and if the Court concluded that the complainant did not suffer any loss, the Court by recording reason decline the relief of compensation under Section 357 (3) of Cr.P.C. But the appellate Court did not consider this question in proper perspective and committed an error. Therefore, by applying the principle laid down in “**Suganthi Suresh Kumar v. Jagdeeshan**” (referred supra) though remand is not permitted under law except re-trial, the matter remanded to the trial Court to award compensation taking into consideration of the loss, if any, suffered by the petitioner-complainant and pass appropriate orders in accordance with law within three (3) months from the date of receipt of a copy of this order.

In the result, the revision is allowed and the matter is remanded to Special Judicial Magistrate of First Class for Railways, Guntur to award compensation, if any the petitioner is entitled in accordance with law, taking into consideration of the loss, if any, suffered by the petitioner-complainant and pass appropriate orders in accordance with law within three (3) months from the date of receipt of a copy of this order.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

08.08.2017
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