

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.378 OF 2014

ORDER:

The revision petitioner is the sole accused in C.C.No.122 of 2011, which is a private compliant case for the offence under Section 138 of N.I.Act, maintained by the revision 1st respondent for dishonor of the Exs.P1 & P2 cheques, dated 19.04.2006 and 22.04.2006, for each Rs.3,00,000/-, saying when presented the same were dishonoured, as per Exs.P3 and P4, and despite statutory legal notice under Ex.P5, covered by Ex.P6 postal receipts, Ex.P7 certificate of posting and Ex.P8, the returned covers un-served and it is out of a sale transaction agreement for sale transaction covered by Ex.P9 for Rs.11,00,000/- and there is a civil suit also filed in O.S.No.2911 of 2007, said to have been decreed under Ex.P11, what the accused exhibited without coming to witness box in cross examination of P.W.1 'sole testimony' is from Exs.D1 to D4 of four D.D. amounts of Rs.49,000/- each paid.

2. The case of the accused is that he paid Rs.5,00,000/- and also Rs.1,96,000/- in all and said Rs.1,96,000/- is covered by Exs.D1 to D4 and Rs.5,00,000/- is admitted by P.W.1 in the Chief Affidavit Para 3 page 2 last lines.

3. It is the defence of accused there from that there is no liability, what P.W.1 stated in the claim by accused as if a

so-called admission is under the sale agreement transaction, through elderly advise, there was a settlement covered by Ex.P10 undertaking letter dated 14.04.2006 and in discharge of the said amount of Rs.11,00,000/-, accused issued three cheques, which are two covered by Exs.P1 and P2 for each Rs.3,00,000/- and another cheque for Rs.5,00,000/-, dated 14.04.2006 and he paid only that Rs.5,00,000/- amount out of Rs.11,00,000/- and failed to pay the Rs.6,00,000/- covered by Exs.P1 and P2. There is nothing even shown by the accused undisputedly including from cross-examination of P.W.1 of subsequent to Exs.P1 and P2 cheques of 19.04.2006 and 22.04.2006 any amount paid.

4. The so-called admission is not in relation to the two cheques in question, but in relation to another cheque for Rs.5,00,000/-. Once such is the case, the trial court with that discussion when rightly came to the conclusion that in finding the accused guilty for the Rs.4,04,000/- due, out of the Rs.6,00,000/- of the two cheques, what he paid only a part payment of Rs.1,96,000/-, in holding accused guilty. However so far as the sentence concerned, the trial court imposed six (6) months simple imprisonment with fine of Rs.4,50,000/- with default sentence of three (3) months and out of Rs.4,50,000/-, Rs.4,40,000/- awarded as compensation to the complainant. The accused maintained, almost unsuccessfully, Criminal Appeal No.283/2012 and the lower appellate court confirmed the said trial courts judgment

in C.C.No.122 of 2011, dated 06.06.2012, by appeal dismissal judgment dated 17.01.2014. Even in the revision maintained, raising several grounds, there is nothing that could be shown. What is argued of the so-called admission of Rs.5,00,000/- paid out of the Rs.6,00,000/- in addition to Rs.1,96,000/- from what the P.W.1 in his chief affidavit stated is not an admission, it is an explanation for the Rs.5,00,000/- received, covered by another cheque dated 14.04.2006, bearing No.391956.

5. Practically, there is nothing to interfere, so far as the concurrent findings of the courts below, in so far as finding the accused revision petitioner guilty concerned. Coming to the sentence proper concerned, as held by the Apex Court in ***Somnath Sarkar Vs. Utpal Basu Mallick & Anr***¹ and also from hearing of both parties, as complainant also says his endeavor is to recover the cheque amount rather than to see that accused be punished, and also Section 143 of the N.I. Act, Amended Act No.55 of 2002 w.e.f.,06.02.2003, with non-abstanti clause of what is contained in the previous sections of the Act and in Cr.P.C., though under Section 29 Cr.P.C., the maximum fine, a magistrate can impose is Rs.10,000/- including by Cr.P.C. Amended Act of 2005, even Section 138 N.I. Act says, the fine double the amount of cheque in the form of compensation with non-abstanti clause to override Cr.P.C., and sentence up to two years or both,

¹ 2014 (1) ALT CrI.145

from the wording of Section 143 Cr.P.C., maximum one year imprisonment and fine above Rs.5,000/- unlimited can be imposed, in directing to try all cases summarily. Even the case tried as regular summons case, instead of summary trial, it makes no difference for nothing shown prejudice apart from the power of the court to convert where it is required, by invoking said provision and by referring to the said expression in **Somnath Sarkar (referred supra)**, this Court feels it just to reduce the sentence of 6 months simple imprisonment till raising of the day and enhance the fine amount from Rs.4,50,000/- to Rs.6,00,000/-, however Rs.50,000/- out of it shall go to the State and remaining Rs.5,50,000/- as compensation to the complainant with default sentence of three months. The complainant is permitted to withdraw whatever the amount in deposit before the trial court and enforce for the balance under Section 421 r/w 431 Cr.P.C., if not paid within one month from date of receipt of the order.

6. Accordingly, Criminal Revision case is allowed in part. Miscellaneous petitions pending, if any, in this case shall stand closed.

DR.B.SIVA SANKARA RAO,J

03.04.2017
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