

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRI.R.C No.2327 of 2018

ORDER:

Petitioner is the accused and the 1st respondent is the complainant in CC.No.106 of 2013 for the offence under Section 138 of NI Act for dishonour of the Cheque bearing No.536821 dated 04.05.2013 for Rs.5,00,000/- and having faced trial, the V Special Magistrate, Kukatpally, Miyapur convicted him by judgment dated 11.07.2014 and sentenced to undergo Rigorous Imprisonment for one year and pay fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for one month.

By appreciation of evidence and having regard to the evidence sufficient in mind from that of PW1 and 2, with reference to Exs.P1 to P7 including registered notice served with no reply and with no defence evidence, the accused in CrI.Appeal No.592 of 2014 even went unsuccessful from the judgment of the trial Court confirmed by the Appellate Court on 02.12.2013.

It is by impugning the said appellate Court findings of conviction, the present Revision is maintained.

Heard the learned counsel for petitioner/accused and the respondent/complainant and perused the material on record.

It is submitted that there is no legally enforceable debt and it is blank cheque with a blank pro-note misused in relation to mortgage at installment and both the trial Court and lower appellate Court failed to appreciate the same. Whereas the counsel for the complainant submitted that it is not his endeavour to see that the accused be convicted but for the recovery of cheque amount and but for that there is nothing to interfere with the concurrent findings.

From the evidence of Pws.1 and 2 and with reference to Exs.P1 to P7, and there is a proof to convict as concluded rightly by courts below with finding of guilt. However, the Apex court in ***Somnath Sarkar vs.Utpal Basu Mallick***¹ observed that the offences under Negotiable Instruments Act are different to other crimes and endeavour of the complainant is mainly to recover the cheque amount due with interest if any and not to see that the accused be convicted and sentenced to undergo imprisonment, unlike that for other forms of crime, the punishment here (in so far as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.

In the facts therein, it was observed that imposing of fine of Rs.1 lakh of which the compensation payable to the complainant of Rs.80,000/- and in the event of failure, to undergo default sentence of six months subserves ends of justice.

Taking into consideration the facts and principle laid down there from and from the submission of the complainant-the respondent to the revision that his endeavour is not to sent the accused-petitioner to jail but for recovery of amount.

Taking consideration of these facts and since it is stated to have paid the compensation amount of Rs.5,00,000/-, and the fine amount of Rs.5,000/-, the judgment of the Courts below of 1 year

¹ 2013 (10)TM 1949

Rigorous imprisonment with a fine of Rs.5,000/- is modified by imposing sentence till rising of the day with fine of Rs.5,20,000/- with default sentence of four months simple imprisonment and of which Rs.5,00,000/- as compensation to the complainant and balance Rs.20,000/- to State, so to deposit the amount of Rs.15,000/-, out of it since Rs.5,000/- fine already stated paid and pay or file proof of payment of compensation supra before the trial court within one month from today. In the event non-payment of the same can be enforced under Section 421 r/w 431 Cr.P.C.

Accordingly, the Criminal Petition is partly allowed.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt. 22.01.2018

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Date: 22.01.2019

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