THE HON'BLE SRI JUSTICE P.KESHAVA RAO

<u>CRIMINAL REVISION CASE No.680 OF 2005</u>

<u>ORDER</u>:

Heard the learned counsel for the petitioner. Pursuant to the order dated 05.06.2018, the notice taken out on the first respondent is served on 19.06.2018 and the same is evident from the track consignment report, which is placed on record vide memo dated 16.08.2018. However, the first respondent has not chosen to appear either in person or by engaging any counsel.

The present Criminal Revision Case is filed questioning the judgment passed in Crl.A.No.243 of 2001 dated 23.02.2005 on the file of the VII Additional Sessions Judge, Guntur to the extent of setting aside the sentence of imprisonment imposed on the accused-first respondent herein for a period of six months pursuant to confirming the conviction for the offence under Section 138 of Negotiable Instruments Act.

The facts in brief are that the petitioner herein filed C.C.No.173 of 1999 against the first respondent for the offence under Section 138 of Negotiable Instruments Act, on the file of the V Additional Munsif Magistrate, Guntur. After trial, the learned Magistrate vide judgment dated 06.04.2001 convicted the first respondent for the said offence and sentenced her to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of 20 days. It is also mentioned that out the fine amount, a sum of Rs.4,000/- shall be paid to the petitioner-complainant towards compensation. Aggrieved by the said judgment, the first respondent herein filed Crl.A.No.243 of 2001 on the file of VII Additional Sessions Judge, Guntur. After hearing, the learned Sessions Judge, by judgment dated 23.02.2005 was pleased to allow the appeal in part confirming the conviction passed against the first respondent, but set aside the sentence of imprisonment while maintaining the sentence of fine of Rs.5,000/-. Aggrieved by the said judgment, the present Criminal Revision Case is filed.

The learned counsel appearing for the petitioner would contend that the provisions of Section 138 of Negotiable Instruments Act would contemplate that a person, who is convicted for the offence shall be punished with imprisonment for a term which may extend to two years or with fine, which may extend twice the amount of the cheque, or with both. Basing on the same, he would contend that the Courts below have got every power to impose a fine upto double the cheque amount. In the case on hand, though the trial Court has convicted the first respondent to undergo rigorous imprisonment for a period of six months and a fine of Rs.5,000/-, the lower appellate Court without assigning any valid reasons, set aside the sentence of imprisonment while confirming the sentence of fine amount.

Having heard the learned counsel for the petitioner and from the perusal of the material on record particularly, the judgment of the lower appellate Court, the reason assigned to set aside the sentence of imprisonment is as under:

> "The accused is a lady and also an employee. The complainant also obtained Ex.P6 promissory note basing on which he can institute civil suit for recovery of the amount due under Ex.P6 promissory note. It is also the evidence that the complainant also filed a suit for recovery

of the amount due under Ex.P7 promissory note dated 28.12.1997 against the accused. The learned counsel for the appellant-accused has urged this Court to take lenient view by setting aside the sentence of imprisonment. Having regard to the above facts and circumstances, I am of the view that the imposition of sentence of imprisonment for a period of six months can be set aside and there are no such circumstances exist in this case to warrant any imposition of sentence of imprisonment on the appellant-accused. Therefore, the sentence of imprisonment for a period of 6 months imposed on the appellant-accused can be set aside but the fine amount of Rs.5000/- imposed on the accused has to be confirmed. The appeal can be partly allowed accordingly."

If the said findings of the lower appellate Court are upheld, it would directly negate the first limb of punishment with imprisonment of Section 138 of Negotiable Instruments Act and the same would become redundant in case, where civil suits are filed.

In fact, Chapter-XVII comprising Sections 138 to 142 of Negotiable Instruments Act is inserted with the object to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. In **Damodar S.Prabhu v. Sayed Babalal H.**[1], the Apex Court held as under:

"3. However, there are some larger issues which can be appropriately addressed in the context of the present case. It may be recalled that Chapter XVII comprising Sections 138 to 142 was inserted into the Act by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988). The object of bringing Section 138 into the statute was to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. It was to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficient arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers. If the cheque is dishonoured for insufficiency of funds in the

[1] 2010(3) ALT (Crl.) 151 (SC)

drawer's account or if it exceeds the amount arranged to be paid from that account, the drawer is to be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both. It may be noted that when the offence was inserted in the statute in 1988, it carried the provision for imprisonment up to one year, which was revised to two years following the amendment to the Act in 2002. It is quite evident that the legislative intent was to provide a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques. While the possibility of imprisonment up to two years provides a remedy of a punitive nature, the provision for imposing a `fine which may extent to twice the amount of the cheque' serves a compensatory purpose. What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions."

From the above, it is clear that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest to ensure the reliability of these instruments. In fact, the impact of this offence is usually confined to the private parties involving commercial transactions. If that be so, merely because a civil suit is filed, it cannot be taken as a ground to set aside the sentence of imprisonment imposing a nominal fine amount. At the stage of passing of the orders, it cannot be visualised that merely because of suit for recovery of amount is filed, the complainant will be able to recover the said amount. The provision itself makes it clear that for an offence under Section 138 of Negotiable Instruments Act, the accused can be punished not only with sentence of imprisonment but also with fine or with both. Thus, when the provision postulates the sentence of imprisonment as well as fine, the Courts cannot defeat the very object of the provision by setting aside the sentence of imprisonment on the premise that a civil suit is filed for recovery of the amount. Certainly, the reasoning given by the lower appellate Court would violate the basic object in enacting the provisions of Sections 138 to 142 of Negotiable Instruments Act. It is relevant that proceedings initiated under Chapter XVII comprising of Sections 138 to 142 of the Negotiable Instruments Act are independent of the proceedings initiated for recovery of amount by filing a civil suit. When both the proceedings are independently maintained, it can not be said that mere filing of a suit for recovery of money, it does not mean that a lenient view can be taken for the offence under Sections 138 to 142 of the Negotiable Instruments Act by setting aside the sentence of imprisonment. Further, when the object of Section 138 of Negotiable Instruments Act is to inculcate faith in banking operations and making the drawer liable for penalties in case of bouncing cheques, the rigour of the provisions cannot be watered down. However, in the peculiar facts and circumstances of the case, since the transaction is of the year 1999, and the present revision case is filed in the year 2005 i.e. after 6 long years, this Court is not inclined to set aside the impugned judgment in setting aside the sentence of imprisonment but to compensate the petitioner/complainant in the form of enhancing the fine amount to meet the ends of justice.

Accordingly, the Criminal Revision Case is allowed in part modifying the judgment of the lower appellate Court by imposing a fine of Rs.20,000/-, in addition to the fine of Rs.5,000/- already imposed, in lieu of setting aside the sentence of imprisonment imposed on the first respondent for the offence under Section 138 of Negotiable Instruments Act, which shall be payable within a period of two months from the date of receipt of the copy of the order and in default, to undergo simple imprisonment for a period of 30 days. It is need less to observe that though the result of the civil suit, as mentioned by the lower appellate Court is not brought to the notice of the Court, the imposition of fine amount by this Court is independent of the result of the said suit.

Pending miscellaneous petitions, if any, shall also stand closed.

P.KESHAVA RAO,J

04th SEPTEMBER 2018.
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