THE HON'BLE SRI JUSTICE P.KESHAVA RAO

I.A.NO.5 OF 2018
IN/AND
CRIMINAL REVISION CASE No.1451 of 2017

ORDER:

The present Criminal Revision Case is filed questioning the orders passed in Crl.A.No.1127 of 2012 dated 30.08.2016 on the file of the Court of Additional Metropolitan Sessions Judge for trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge, Hyderabad, confirming the conviction and sentence passed in C.C.No.121 of 2010 dated 05.11.2012 on the file of XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate at Hyderabad, except modifying the sentence of fine amount imposed on A.1 from Rs.10,000/- to Rs.12,50,000/- and directing A.2 to pay the said amount within one month from the date of judgment, in default, to undergo simple imprisonment for six months.

Heard the learned counsel for the petitioners and the second respondent.

The facts, in brief, are that the respondent No.2 herein is a private limited company incorporated under the Companies Act having its registered office situated at Bahadurpura, Hyderabad. The respondent No.2 is engaged in the business of manufacturing TMT Bars and its allied items having its factory at Teejapour village, Mahaboobnagar District. The petitioners herein contacted the respondent No.2 and requested for supply of TMT Bars on credit basis having agreed to pay the amount within 30 days from the date of supply. Believing the words of the petitioners' company, TMT Bars as required by them, were supplied under different invoices. The amount payable out of the said transactions is Rs.1,11,90,307/-. Towards the said liability, the petitioners have issued cheques bearing Nos.412386 and 412387, both dated 26.03.2009 for a sum of Rs.10,78,979/- and Rs.10,99,099/- respectively, drawn on HDFC Bank Limited, Begumpet, Hyderabad. When the said cheques were presented for realization, the same were dishonoured with endorsement 'funds insufficient'. After issuing of legal notice, in compliance with the mandatory procedure as contemplated under the provisions of the Negotiable Instruments Act, the complaint was lodged.

To substantiate its contentions, the respondent No.2 examined P.W.1 and marked Exs.P.1 to P.30 on its behalf. The petitioners examined D.W.1 on their behalf and marked Exs.D.1 to D.10. After hearing both the parties, the trial Court, by its orders dated 05.11.2012 found both the petitioners guilty for the offence under Section 138 of Negotiable Instruments Act and imposed a fine of Rs.10,000/- on petitioner No.1, and petitioner No.2 is directed to pay the said fine amount and that the petitioner No.2 is sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for one month. Aggrieved by the said orders, the petitioners herein filed an appeal in Crl.A.No.1127 of 2012 on the file of Court of Additional Metropolitan Sessions Judge for trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge, Hyderabad. The lower appellate Court, after hearing, was pleased to pass judgment dated 30.08.2016 modifying the judgment of trial Court to the extent of sentence of fine imposed on petitioner No.1

from Rs.10,000/- to Rs.12,50,000/- and directed the petitioner No.2 to pay the said fine amount within one month from the date of the orders, in default, to undergo simple imprisonment for a period of six months. Aggrieved by the said orders, the present Criminal Revision Case is filed.

The learned counsel appearing for the petitioners contended that subsequent to initiation of the proceedings in C.C.No.121 of 2010 for the offence under Section 138 of Negotiable Instruments Act, the petitioners have already paid the amounts covered by the cheques to the respondent No.2. In the grounds of revision, the petitioners have categorically mentioned the amounts paid to the respondent No.2. Therefore, the entire liability of the amounts covered by the cheques stood discharged and on that ground he submitted that the judgments of both the Courts below are contrary to law and material on record, apart from other various grounds.

Per contra, the learned counsel appearing for the respondent No.2, fairly submitted that the respondent No.2 has received the amounts covered by the cheques, but the respondent No.2 is entitled for the interest accrued thereon from the date of supply of the material to the petitioners herein. He also brought to the notice of this Court that the material was supplied to the petitioners in the year 2009 and since then, the amounts were held up with the petitioners. Since the respondent No.2 being a private limited company engaged in the manufacturing business, it is put to great financial hardship. In those circumstances, the counsel requested for dismissal of the Criminal Revision Case for non-payment of the interest amount.

During the pendency of the Criminal Revision Case, the petitioners herein filed an application in I.A.No.5 of 2018 under Section 147 of Negotiable Instruments Act to set aside the judgment passed in Crl.A.No.1127 of 2012, dated 30.08.2016 on the file of the Additional Metropolitan Sessions Judge for trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge, Hyderabad, confirming the conviction and sentence passed in C.C.No.121 of 2010 dated 05.11.2012 on the file of XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate at Hyderabad by modifying the sentence of fine amount imposed on A.1 from Rs.10,000/- to Rs.12,50,000/- and directing A.2 to pay the said amount within one month from the date of judgment, in default, to undergo simple imprisonment for six months, on the ground that the amounts covered by the cheques in question are already paid along with the additional sum imposed by the lower appellate Court. The learned counsel for the petitioners submitted that the offence under Section 138 of Negotiable Instruments Act is only a civil wrong and by applying the principles of Section 143 of Negotiable Instruments Act read with Section 258 of Cr.P.C., the Court can discharge the accused and close the proceedings on satisfaction that the cheque amount with assessed cost and interest is paid, even in the absence of the consent of the complainant. He also submitted that compounding of an offence even at a later stage, is not barred. To substantiate his contentions, the learned counsel relied on a decision of Apex

Court reported in **Meters and Instruments Private Limited and Another v. Kanchan Mehta**({2018} 1 SCC 560).

Per contra, the learned counsel appearing for the respondent No.2 though fairly conceded the settled proposition of law enunciated by the Apex Court, but requested this Court to compensate the respondent No.2 adequately, more particularly, looking into the aspect that the material was supplied in the year 2009 etc.

Having heard both the counsel and after perusing the material on record, admittedly, there is a long delay in payment of the cheque amounts to the respondent No.2 by the petitioners. The respondent No.2 being a private limited company and having the business of supply of TMT Bars, should be adequately compensated by awarding a fixed amount for the loss sustained by it. Therefore, this Court having regard to the fact that the amounts covered by the cheques and the additional amounts were already paid, direct the petitioners herein to pay a sum of Rs.2,50,000/- to the respondent No.2 towards the loss caused to it, which also include the expenditure for all these years. Accordingly, I.A.No.5 of 2018 is ordered.

In view of the orders passed in I.A.No.5 of 2018, the Criminal Revision Case is allowed setting aside the judgment passed in Crl.A.No.1127 of 2012 dated 30.08.2016 on the file of the Court of Additional Metropolitan Sessions Judge for trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge, Hyderabad, confirming the conviction and sentence passed in C.C.No.121 of 2010 dated 05.11.2012 on the file of XIV Additional

Judge-cum-XVIII Additional Chief Metropolitan Magistrate at Hyderabad, modifying the sentence of fine amount imposed on A.1 from Rs.10,000/- to Rs.12,50,000/- and directing A.2 to pay the said amount within one month from the date of judgment, in default, to undergo simple imprisonment for six months. It is needless to observe that in the light of the orders passed in I.A.No.5 of 2018, the petitioners are directed to pay the said amount of Rs.2,50,000/- to the respondent No.2 within a period of eight weeks from the date of receipt of a copy of the order.

Pending miscellaneous petitions, if any, shall stand closed.

P.KESHAVA RAO,J

02nd JULY 2018.
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