

HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.488 of 2007

ORDER:

Heard the learned counsel for the parties.

The present criminal revision case is filed questioning the judgment dated 12.03.2007 passed in CrI.A.No.32 of 2006 on the file of the V Additional District and Sessions Court (FTC), Ongole, confirming the judgment dated 04.04.2006 passed in C.C.No.434 of 2004 on the file of the II Additional Judicial Magistrate of First Class, at Ongole, convicting the petitioners for the offence under Section 420 IPC and sentencing them to undergo simple imprisonment for a period of six months.

The brief facts of the case are that the de facto complainant Smt.S.Lakshmi Kumari-PW-1 is the family friend of the petitioners. During the year, 2001, first petitioner requested the de facto complainant to give a sum of Rs.50,000/- towards hand loan for the purpose of construction of the house promising to repay the same after encashment of loan. In that connection, the petitioners have taken loan of Rs.3 lakhs from the de facto complainant on different occasions. Thereafter, the de facto complainant demanded for repayment of the said amount. Pursuant thereto, the petitioners/accused executed an agreement on Rs.50/- stamp paper in the presence of one Sri N.Laxminarayana/Notary (PW-2) agreeing to sell their house for Rs.3,25,000/- and they have already received Rs.3,00,000/- towards part satisfaction from the de facto complainant and will register the same in favour of the de facto

complainant. Subsequently, the de facto complainant came to know that the petitioners have already taken Rs.1,60,000/- from the A.P. Co-operative Housing Societies Federation, Hyderabad through the President of Shiridi Sai Co-operative House Building Society Limited, Ongole by executing a mortgage deed of the said house on 6.11.2001. The second petitioner also taken a loan of Rs.1,25,000/- on 26.11.2001 from one P. Rama Rao-PW-5 by executing a mortgage deed of his house in his favour which was registered in the office of the Sub-Registrar at Ongole. After coming to know about the same, the de facto complainant and PW-4 demanded the petitioners to repay the said amount. The petitioners issued a cheque for Rs.3,75,000/- on 3.12.2003. When the same was presented for realization, it is dishonoured with an endorsement 'insufficiency of funds'. When the de facto complainant approached the petitioners on 15.12.2003 and informed about the dishonour of cheque, the petitioners executed another agreement on Rs.100/- stamp paper that they will pay an amount of Rs.1,50,000/- to the de facto complainant on or before March, 2004 and the remaining amount of Rs.2,25,000/- within four instalments, but did not repay any amount. Thereby, the de facto complainant filed the said complaint against the petitioners for the offence under Section 420 IPC. Subsequently, the Court below has taken cognizance of the offence against the petitioners under Section 420 IPC and numbered the case as C.C.No.434 of 2004. The documents were furnished to the petitioners under Section 207 Cr.P.C. on their appearance. When the petitioners were examined under Section 239 Cr.P.C., they denied the offence. The

prosecution in order to prove its case examined PWs.1 to 11 and marked Exs:P-1 to P-9. After closure of the prosecution evidence, the petitioners were examined under Section 313 Cr.P.C. explaining the incriminatory circumstances appearing against them in the evidence of the prosecution witnesses. The petitioners have denied the same and pleaded that they did not commit any offence. The first petitioner himself examined as DW-1 and also examined his brother-in-law by name Benzi Babu as DW-2. In fact, no exhibits were marked on behalf of the petitioners. After hearing the matter and appreciating the evidence on record, the learned Magistrate, by judgment dated 04.04.2006, convicted the petitioners for the offence under Section 420 IPC and sentenced them to undergo simple imprisonment for six months. Aggrieved by the same, the petitioners have filed an appeal in CrI.A.No.32 of 2006 before the Court of the V Additional District and Sessions Judge (FTC), Ongole. After hearing, the lower appellate Court dismissed the appeal by judgment dated 12.03.2007, confirming the conviction and sentence passed by the learned Magistrate. Aggrieved by the said judgment, the present criminal revision case is filed.

Learned counsel appearing for the petitioners, contended that both the Courts below committed an error in convicting the petitioners without considering the evidence on record in proper perspective. The lower appellate Court erred in convicting the petitioners since the debt due to the de facto complainant was already paid through DW-2. In fact, both the Courts below also failed to appreciate the evidence available on record that the de facto complainant already filed C.C.No.245 of 2004 under Section

138 of the Negotiable Instruments Act wherein the first petitioner was acquitted. But for the same transaction, again the de facto complainant filed the present case. During the pendency of the present revision, the petitioners have filed an application in I.A.No.3 of 2018 seeking leave of the Court to file the additional material papers i.e. bank slip, death certificate and award copy of the Lok Adalat and the same is ordered. Basing on the said material filed along with the application, the learned counsel would submit that the disputed amount has already been paid to the de facto complainant by virtue of attachment of salary of the first petitioner pursuant to the award passed before the Lok Adalat Bench, District Legal Services Authority, Prakasham District at Ongole vide Pre-Litigation Case No.52 of 2012, Lok Adalat Case No.87 of 2012, dated 01.02.2012. A perusal of the said award, dated 01.02.2012, and the certificate dated 02.05.2018 issued by the Life Insurance Corporation of India, Branch Office, Singarayakonda it is evident that a sum of Rs.2,50,000/- has already been cleared in March, 2016 as per their office records. Basing on the same, the learned counsel for the petitioner requested this Court to allow the revision.

Learned counsel for the petitioners also submitted that the present offence alleged against the petitioners is personal in nature having no repercussions on the society. When the petitioners have already compromised with the de facto complainant, in pursuance of which, the amount was also paid on the basis of the Lok Adalat Award dated 01.02.2012, the first petitioner may be acquitted since the second petitioner died on 02.09.2014. To support his contention,

he relied on a decision reported in MANOHAR SINGH v. STATE OF MADHYA PRADESH AND ANOTHER¹. The relevant para is as under:

"In the instant case, the appellant is convicted under Section 498-A IPC and sentenced to undergo six months' imprisonment. He is convicted under **Section 4 of the Dowry Act** and sentenced to undergo six months' imprisonment. Substantive sentences are to run concurrently. Even though the appellant and Respondent 2 wife have arrived at a compromise, the order of conviction cannot be quashed on that ground because the offences involved are non-compoundable. However, in such a situation if the court feels that the parties have a real desire to bury the hatchet in the interest of peace, it can reduce the sentence of the accused to the sentence already undergone. Section 498-A IPC does not prescribe any minimum punishment. **Section 4 of the Dowry Act** prescribes minimum punishment of six months but proviso thereto states that the court may, for adequate or special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which may be less than six months. Therefore, sentence of the appellant can be reduced to sentence already undergone by him.

He also relied on another decision reported in ANITA MARIA DIAS AND ANOTHER v. STATE OF MAHARASHTRA². The relevant paragraph is as under:

"While deciding whether to exercise its power under [Section 482](#) of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under [Section 482](#) of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under [Section 307](#) IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under [Section 307](#) IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime."

A perusal of the above said judgments, would indicate that if the Court feels that the parties have a real desire to bury the

¹ (2014) 13 SCC 75

² (2018) 3 SCC 290

hatchet, in the interest of peace, the sentence of the petitioners can be reduced to sentence already undergone by them.

In the case on hand, the parties have already settled the matter, in pursuance of which an award dated 1.02.2012 has been passed by the Lok Adalat Bench, Prakasham District at Ongole. In pursuance of the same, when the parties have already settled the matter and disputed amounts have been paid back, this Court feels that no useful purpose would be served. That apart, even the offence alleged against the petitioners is also private in nature, and it does not have any repercussions on the society. Under these circumstances, this Court deems it appropriate to acquit the petitioners in the light of the award dated 1.02.2012 in L.A.C.No.87 of 2012, for the offence under Section 420 IPC.

Accordingly, the criminal revision case is allowed setting aside the judgment dated 12.03.2007 passed in CrI.A.No.32 of 2006 on the file of the V Additional District and Sessions Court (FTC), Ongole, confirming the judgment dated 04.04.2006 passed in C.C.No.434 of 2004 on the file of the II Additional Judicial Magistrate of First Class, at Ongole. The first petitioner is acquitted of the offence punishable under Section 420 IPC. Since the second petitioner died on 02.09.2014, the case against him is abated.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

P. KESHAVA RAO, J

Date: 16.08.2018
Ccm

HON'BLE SRI JUSTICE P. KESHA RAO



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Date:16.08.2018

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