

THE HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE NO. 2303 OF 2011

ORDER:

Heard the learned counsel for the petitioner.

2. The present Criminal Revision Case is filed challenging the judgment in CrI.A.No.149 of 2007 dated 15.3.2011 on the file of the Court of Sessions, Sessions Division, Nellore, in modifying the sentence of three months imprisonment to that of directing respondent No.1 to pay twice the cheque amount apart from fine.

3. The facts in brief are that respondent No.1 herein issued a cheque bearing No.838258 dated 28.10.2004 for a sum of Rs.10,000/- drawn on State Bank of India, Vedayapalem, branch Nellore, to the petitioner towards discharge of the debt under promissory note dated 11.4.2004. When the petitioner presented the said cheque for realization, it was returned without encashment on 19.11.2004 with a return memo dated 19.11.2004 with an endorsement, "insufficient funds" in the account of respondent No.1. Thereafter, the petitioner, after complying with the procedure as contemplated under the provisions of Negotiable Instruments Act i.e., issuance of the legal notice and after failure of respondent No.1 to pay the said amount, filed CC.No.215 of 2005 on the file of the II.Additional

Judicial Magistrate of First Class, Nellore. Respondent No.1, after appearing, was furnished with all the documents as contemplated under Section 207 Cr.P.C. Respondent No.1 was examined under Section 251 Cr.P.C. explaining the evidence available against him and he denied the same leading to trial. During the course of trial, the petitioner himself examined as PW1 and got marked Exs.P1 to P6. After closure of the evidence, respondent No.1 was examined under Section 313 Cr.P.C., and he was informed about the incriminating material available against him in the evidence of PW1 but he denied the same. On the other hand respondent No.1 examined his wife as DW1 and got marked Ex.D1 on his behalf. The II. Additional Judicial Magistrate of I Class, after hearing and analyzing the evidence on record, by judgment dated 10.12.2007 convicted and sentenced respondent No.1 to undergo simple imprisonment for a period of three months and to pay a fine of Rs.500/- , in default, to undergo simple imprisonment for one week. Aggrieved by the said orders, respondent No.1 filed CrI.A.No.149 of 2007 on the file of the Court of Sessions, Sessions Division, Nellore. The lower appellate Court, by judgment dated 15.3.2011, set aside the sentence of imprisonment of three months but ordered to maintain the fine amount of Rs.500/-. Respondent No.1 was

further directed to deposit twice the cheque amount i.e., Rs.20,000/- in the Court towards compensation to the petitioner under Section 357 (3) Cr.P.C. to meet the ends of justice. Aggrieved by the same, the present Criminal Revision Case is filed.

4. Learned counsel for the petitioner would contend that though the respondent No.1 admitted before the appellate Court that he is ready to pay twice the cheque amount, he has not paid. Learned counsel also submitted that the lower appellate Court, without giving any reasons, set aside, the sentence of imprisonment against respondent No.1 and imposed the compensation.

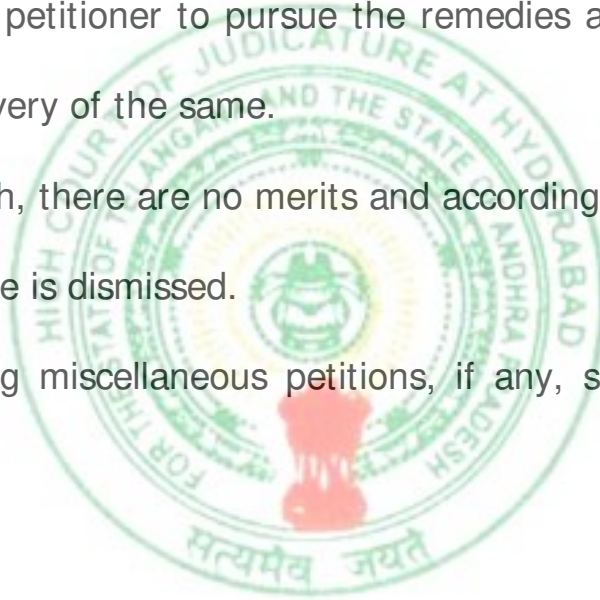
5. Having heard the learned counsel and from the perusal of the material on record, particularly, the judgment of the lower appellate Court, it is revealed that during the pendency of the appeal, respondent No.1 has submitted documentary evidence showing that he is suffering with paralysis and heart attack and taking treatment from Narayana Hospital, Nellore. He has also submitted the Xerox copies of out patient card and discharge summary issued by the said hospital. In those peculiar circumstances, the lower appellate Court was pleased to set aside the sentence of imprisonment and in lieu of the same imposed twice the cheque amount as compensation. When the

lower appellate Court has considered the said medical record and set aside the sentence of imprisonment, this Court is not inclined to interfere with the said judgment. But at the same time, it is brought to the notice of this Court by the learned counsel for the petitioner that despite respondent No.1 agreeing to pay twice the cheque amount, he is not coming forward to pay the same.

6. When respondent No.1 failed to pay the said amount, it is open to the petitioner to pursue the remedies available as per law for recovery of the same.

7. As such, there are no merits and accordingly, the Criminal Revision Case is dismissed.

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



P. KESHA RAO,J

Date: 8.10.2018

KPM