

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

I.A.No.2 of 2018 in Crl.R.C.No.842 of 2014

and

Crl.R.C.No.842 of 2014

COMMON ORDER:

The accused is present and identified by his counsel Sri Tene Pandu Ranga Rao. The complainant is present and identified by his counsel Sri Raj Kumar Rudra.

2) The complainant filed C.C.No.249 of 2011 before the learned VII Special Magistrate, Hyderabad, under Section 138 of Negotiable Instruments Act (for short "N.I Act") on the allegation that cheque for Rs.3,00,000/- dated 10.03.2010 issued by the accused towards repayment of the hand loan was bounced back. The accused contested the matter. The Trial Court acquitted the accused.

3) Aggrieved, the complainant preferred Criminal Appeal No.523 of 2013 before the learned Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad and the same was allowed by setting aside the judgment of the Trial Court and the accused was convicted for the offence under Section 138 of N.I. Act and sentenced to pay fine of Rs.1,50,000/- within two months and in default to suffer R.I for six months.

Aggrieved, the accused preferred Crl.R.C.No.842 of 2014.

4) When the matter is pending, both parties filed I.A.No.2 of 2018 under Section 147 of N.I. Act, submitting that at the intervention of

elders both of them have entered into compromise and they propose to compound the offence and therefore, the petition may be allowed and the conviction and sentence passed against the accused by the lower Appellate Court may be set aside by acquitting him. In the compounding petition it is submitted that the accused is paying Rs.1,50,000/- to the complainant vide Demand Draft bearing No.028692 dated 19.11.2018 drawn on Syndicate Bank, Service Branch, Hyderabad and the complainant has agreed to receive the said amount.

5) During the course of enquiry when questioned, the complainant admitted that he received Rs.1,50,000/- from the accused by way of Demand Draft No.028692 dated 19.11.2018 drawn on Syndicate Bank, Service Branch, Hyderabad and submitted that he has no objection for setting aside the conviction and sentence passed against the accused by the lower Appellate Court. As per Section 147 of N.I Act, notwithstanding anything contained in the Code of Criminal Procedure, every offence punishable under this Act shall be compoundable. As such there can be no demur that the instant offence is compoundable. Now coming to the guidelines issued down by Hon'ble Apex Court in ***Damodar S. Prabhu v. Sayed Babalal H.***¹, if the application for compounding is made before the Sessions Court or High Court in revision or appeal, such compounding may be allowed on the condition of accused paying 15% of the cheque amount by way

¹ (2010) 5 SCC 663

of costs. Therefore, as per the said guideline, the accused in this case is liable to pay Rs.45,000/- (cheque amount is Rs.3,00,000/-).

However, in the said decision, the Apex Court has observed thus:

*“**Para 25:** x x x x Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end.”*

Having regard to the relaxation clause mentioned in the said judgment, the Court can reduce the costs with regard to the specific facts and circumstances of a case. In the instant case, the submission of accused is that he is doing petty business and earning about Rs.10,000/- per month and fending his family which consists of parents, himself, his wife and a daughter. The accused submits that he is residing in a rented accommodation.

6) It is informed to this Court that in CrI.R.C.M.P.No.1344/2014, this Court while granting suspension of sentence pending revision, directed the accused to deposit 10% of the fine amount imposed by the lower Appellate Court to the credit of the Trial Court and accordingly, he deposited Rs.15,000/- before the Trial Court.

7) Having regard to the above submission on behalf of the accused and considering his financial position, this Court is of the

view that instead of imposing 15%, 5% of the cheque amount can be imposed by way of costs which comes to Rs.15,000/- (Rs.3,00,000/- x 5%).

8) In that view, I.A.No.2 of 2018 is allowed and the parties are permitted to compound the offence. Consequently, the CrI.R.C.No. 842 of 2014 is allowed and the conviction and sentence passed by the lower Appellate Court is set aside and the accused is acquitted of the offence. The Trial Court is directed to remit the fine amount of Rs.15,000/- deposited by the accused to the High Court Legal Services Committee, Hyderabad and intimate the same to the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 28.11.2018
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