

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

I.A.No.1 of 2018 & CrI.R.C.No.2991 of 2016

ORDER:

I.A.No.1 of 2018 is filed under Section 147 N.I.Act to record the compromise between the parties and allow the Criminal Revision case by duly setting aside the judgment dated 22.11.2016 in CrI.A.No.168 of 2015 on the file of IV Additional District & Sessions Judge, Tanuku.

2. CrI.R.C.No.2991 of 2016 is arising out of order dated 22.11.2016 passed in CrI.A.No.168 of 2015 by the learned IV Additional District & Sessions Judge, Tanuku.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. Learned counsel for the petitioner submits that the 1st respondent- Kovvuri Vijaya Lakshmi has compromised the matter with the petitioner/accused and filed the present application seeking permission for compounding the offence under Section 147 of Negotiable Instruments Act (N.I.Act).

5. Section 147 of N.I.Act is the new provision introduced in the Act. The effect of non-obstante clause in Section 147 is requirement of consent of the person compounding in section 320 Cr.P.C. is necessary even in case of compounding of offence under the N.I. Act. The said preposition was held in **JK Industries Limited and others**

Vs Amarlal V. Jumaní and another¹. Section 147 of the Act is in the nature of enabling provision which provides for compounding the offences prescribed under the same Act, thereby serving as an exception to the general rule incorporated in sub-section (a) of Section 320 of Code of Criminal Procedure which state that “No offence shall be compounded except as provided by this section,” since section 147 was inserted by way of an amendment to a special law, the same will override the effect of sub-section(a) of section 320 of Code of Criminal Procedure. The said preposition was held in the case of **Damodar S Prabhu Vs Syed Babulal H**².

6. The present application is filed by the petitioner/accused and the 1st respondent seeking permission for compounding the offence. The 1st respondent has also filed her affidavit stating that she filed a complaint before the learned II Additional Judicial First Class Magistrate, Tanuku against the petitioner/accused for the offence under Section 138 of N.I.Act and the same was numbered as CC No.116 of 2012, and after trial, the petitioner/accused was convicted for the offence under Section 138 of N.I.Act. Thereafter, the petitioner/accused preferred an appeal before the IV Additional District & Sessions Judge, West Godavari District, Tanuku vide CrI.A.No.168 of 2015 and the same was

¹ AIR 2012 SC 1079

² AIR 2010 SC1907

dismissed vide judgment dated 22.11.2016 by confirming the lower Court judgment. Aggrieved by the same, the petitioner/accused preferred the present Criminal Revision and the present I.A.No.1 of 2018 is filed for compounding the offence as the matter has been compromised out of the Court.

7. Both parties are present with their learned counsel and agreed for the Terms of Compromise mentioned in the Joint Memo filed by both of them.

8. In view of the submissions made by learned counsel for the petitioner/accused and in view of the provision under Section 147 of N.I. Act and in the light of Joint memo filed by both parties the offence is compounded on payment of 15% of the cheque amount.

9. Learned counsel for the petitioner submits that the petitioner/accused has already paid 15% of the cheque amount i.e., Rs.20,250/- (Rupees Twenty thousand two hundred and fifty only) by way of Banker's cheque bearing No.239316 dated 26.11.2018 in favour of the Secretary, High Court Legal Services Authority. Since 15% of the cheque amount has been paid, the parties are directed to compound the offence under Section 147 of N.I. Act.

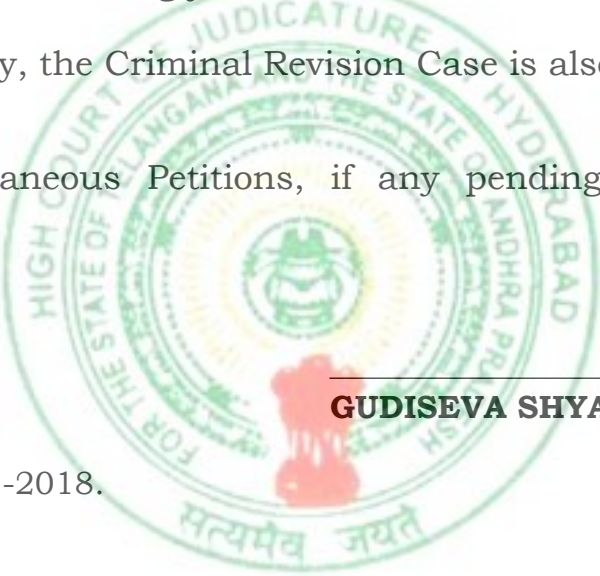
10. Accordingly, the offences are compounded against the petitioner/accused and consequently the judgment dated 22.11.2016 passed in CrI.A.No.168 of 2015 by the lower

appellate Court is hereby set aside and the petitioner/accused is acquitted.

11. Learned counsel for the 1st respondent submitted that the petitioner/accused has deposited some amounts before the trial Court and the 1st respondent may be permitted to withdraw the same since the petitioner has already satisfied the 1st respondent/complainant by paying the amounts as per the terms mentioned in the Joint Memo.

12. Accordingly, I.A No.1 of 2018 is allowed. Consequently, the Criminal Revision Case is also allowed.

Miscellaneous Petitions, if any pending, shall stand closed.



GUDISEVA SHYAM PRASAD, J.

Date : 26-11-2018.

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