

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CRIMINAL REVISION CASE No.636 of 2005

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C., questioning the judgment dated 06.01.2005 passed by the learned VI Metropolitan Magistrate, Hyderabad in C.C.No.195 of 2001 imposing a meager fine of Rs.5,000/- on respondent No.1-accused.

The case of the petitioner-complainant is that respondent No.1 issued a cheque for a sum of Rs.60,000/- in discharge of the liability by way of repaying the loan taken from him; that when the said cheque was presented for collection, the same was dishonoured for insufficient funds, as such, he filed the above said C.C. and that the learned Magistrate after conducting a detailed trial and after examining the witnesses, found respondent No.1 guilty for the offences punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') and thereby, convicted and sentenced him to pay a fine of Rs.5,000/-, in default, to suffer imprisonment for three months. His grievance is that the punishment imposed was grossly inadequate, as the cheque amount was Rs.60,000/-.

On earlier occasions, when the matter was listed before the Lok Adalat, the petitioner and respondent No.1 were absent in spite of the notices having been served, as such, the matter could not be settled. Today also, before this Court, none appears for the petitioner and respondent No.1.

Learned Assistant Public Prosecutor, who had assisted this Court, would submit that at the relevant point of time i.e., prior to the amendment to the Act 55 of 2002, the maximum punishment that could be imposed is, one year with fine, which may extend to twice the amount of the cheque, or with both. He would further submit that the learned Magistrate has exercised his discretion and imposed a fine of Rs.5,000/- assessing the gravity of the offence.

It may be noted that the Honourable Supreme Court in **Meters and Instruments Private Limited and Another Vs.Kanchan Mehta**¹ had an occasion to consider the nature of the proceedings before the Criminal Court in the cases arising under the Act, particularly with respect to cheque bouncing cases. Paragraphs 18.1, 18.2, 18.3 and 19 of the judgment read as under:

“18. From the above discussion following aspects emerge:

- i) Offence under [Section 138](#) of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under [Section 139](#) but the standard of such proof is “preponderance of probabilities”. The same has to be normally tried summarily as per provisions of summary trial under the [Cr.P.C.](#) but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of [Section 258](#) Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.
- ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.
- iii) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant

¹ (2018)1 Supreme Court cases 560

has been duly compensated, can in its discretion close the proceedings and discharge the accused.

19. In view of the above, we hold that where the cheque amount with interest and cost as assessed by the Court is paid by a specified date, the Court is entitled to close the proceedings in exercise of its powers under [Section 143](#) of the Act read with [Section 258](#) Cr.P.C. As already observed, normal rule for trial of cases under Chapter XVII of the Act is to follow the summary procedure and summons trial procedure can be followed where sentence exceeding one year may be necessary taking into account the fact that compensation under [Section 357\(3\)](#) Cr.P.C. with sentence of less than one year will not be adequate, having regard to the amount of cheque, conduct of the accused and other circumstances.”

It may also be noted that the object of the Act is to ensure financial discipline and adherence to the promise made by the issuer of the cheque. In those circumstances, this Court considers it appropriate that the fine amount be enhanced to Rs.90,000/- instead of Rs.5,000/-. It is made clear that if the matter is settled between the parties, it is not necessary for respondent No.1 to pay the fine amount.

Subject to the above, the Criminal Revision Case is disposed of.

Miscellaneous petitions, if any, pending in this revision shall stand disposed of. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dt:18.02.2020

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