HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.3363 of 2018

ORDER:

The accused is the revision petitioner and the 2nd respondent is the defacto complainant. It is outcome of private complaint for the offence under Section 138 NI Act for the cheque bearing No.739518 dated 04.12.2012 for Rs.7,80,000/- drawn on HDFC Bank when presented returned dishonoured from the statutory notice after cheque return memo from non-payment from accrual of cause of action from the complaint averments the learned IX Additional Chief Metropolitan Magistrate, Hyderabad, taken cognizance by allotting CC.No.32 of 2013 and later the case was transferred to IX Special Magistrate, Hyderabad, where renumbered as CC.No.464 of 2013 and from the trial conducted with reference to evidence of PW.1-complainant and 2 witnesses in defence including the accused as DW.1 and with reference to Exs.P1 to P7 and Exs.D1 to D12 the trial Court passed by appreciation of the evidence available on record by holding the accused guilty for the dishonour of cheque issued in discharge of legally enforceable debt for could not rebut the presumption and even notice sent cause returned is a due service in sentencing him to undergo 6 months with simple imprisonment with fine of Rs.3,000/- and also default sentence of one month simple imprisonment and another compensation of Rs.7,80,000/- and the same was confirmed by the lower appellate Court in Crl.A.No.237 of 2017 dated 30.11.2018 by the learned III Additional Metropolitan Sessions Judge, Hyderabad, and the present revision is impugnment of the same.

Heard learned counsel for the petitioner and learned counsel for the 2nd respondent-complainant present in person represented by Sri Prasanth and perused the material on record and the grounds of revision.

The concurrent finding on fact in arriving the conclusion from the cheque return on the ground of account blocked is prone to the recourse under Section 138 of the Act and the contention contrary to it of both Courts went wrong and found the accused guilty by non-application of mind thereby untenable and practically from the perusal of the concurrent findings of fact arrived by the Courts below for this Court while sitting in revision there is no any illegality or impropriety or perversity and in so far as the so called non-filing of the income tax assessment concerned, there is no factual foundation of no means, leave about not even the case that he has shown in his account and even asked not produced to draw any inference, leave about the cheque rooted from the account not disputed that also the signature thereby as held by the three judge bench in **Rangappa Vs. Mohan**[1] on reverse onus clause with reference to the presumption under Sections 118 & 139 of the Act the burden is on the accused that was rightly concluded by the lower appellate Court and trial Court and the accused failed to discharge reverse onus burden.

Having regard to the above, so far as the finding of the guilt concerned, there is nothing to interfere.

No doubt as pointed out by the learned counsel for the accused/revision petitioner the trial Court if at all to impose along with the sentence of imprisonment other than compensation/fine,

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[1] AIR 2010 SC 1898

compensation to be paid is only out of fine and not separately again without such mention as out of fine and not even the case when above only awarding of compensation. Even taken the same as such because of the irregularity in the judgment that was also not properly noticed by the Court below, what is the fine imposed goes to be set aside in confirming the compensation that can be awarded further finding of guilty with substantial sentence of imprisonment.

At this stage, it is the submission of the learned counsel for the respondent/complainant that its endeavour to recover the amount rather than to see the accused be sentenced to imprisonment and to send to jail and both drawn the attention of the Court to the expression in **Somnath Sarkar Vs. Utpal Basu Mallick[2].** It is observed that the offence under NI Act are some what different to other conventional offences and almost endeavour of the complainant is to recover the amount rather than see the accused to be sentenced to imprisonment.

Having regard to the above, taking into consideration of the same and from the submission that cheque amount out of adjustment already paid to the complainant by accused through elders, the sentence of 6 months imprisonment is reduced to till raising of the day i.e., today since accused present and the compensation of Rs.7,80,000/- is while confirming enhanced to Rs.8,00,000/- by recorded Rs.7,80,000/- paid and by setting aside Rs.3,000/- fine amount by adjusting out of Rs.20,000/-. The said fine amount by asking to pay out of the compensation amount of Rs.8,00,000/- from what is stated paid to the complainant

[2] (2014 (1) ALT Crl.145

Rs.7,80,000/-, Rs.20,000/- to the State by reducing Rs.3,000/- already paid accused to deposit Rs.17,000/- as fine amount to the State within one week from the date of receipt of this order. It is otherwise by imposing said compensation of Rs.8,00,000/- as fine from the expression with reference to Section 143 of the Amended Act the fine can be imposed unlimited without any application of the bar under Section 29 Cr.P.C. and in the event of non-payment of Rs.17,000/- as fine to the State within one week from the date of receipt of this order, the learned Magistrate by virtue of this order to issue warrant levying the fine amount to recover the same under Section 431 read with Section 421 of Cr.P.C.

Accordingly and in the result, this Criminal Revision Case is disposed of.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 04.02.2019
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