

THE HONOURABLE DR. JUSTICE D.NAGARJUN

I.A.Nos.1 and 2 of 2022

IN/AND

CRIMINAL REVISION CASE No.608 of 2012

ORDER:

This Criminal Revision Case is filed by the Revision petitioner- accused to set aside the judgment dated 29.02.2012 in Criminal Appeal No.72 of 2010 passed by the learned Additional Metropolitan Sessions Judge, Cyberabad confirming the judgment dated 18.05.2010 in C.C.No.1178 of 2007 passed by the learned Judicial Magistrate of First Class - cum Special Mobile Court – cum – XI Metropolitan Magistrate, Cyberabad at L.B.Nagar, wherein the petitioner was convicted and sentenced to undergo simple imprisonment for a period of six months and to pay compensation of Rs.1,00,000/- for the offence under Section 138 of the Negotiable Instruments Act.

2. The facts in brief as can be seen from record available before the Court are as under:

a) The revision petitioner – accused has borrowed an amount of Rs.1 lakh from the respondent – complainant for his domestic needs vide cheque No. 090788 dated 15-01-2015 drawn on SBH, Chaitanyapuri Branch. The petitioner in

discharge of the said amount has issued a cheque bearing No.491200 dated 01.11.2005 for Rs.1,00,000/- drawn on UCO Bank, Malakpet Branch to the respondent –complainant. When the said cheque was presented in the bank by the respondent, the said cheque was returned with an endorsement “funds insufficient”.

b) After issuing of legal notice and on completion of formalities, the respondent has filed a complaint against the petitioner before the learned Judicial Magistrate of First Class - cum Special Mobile Court – cum – XI Metropolitan Magistrate, Cyberabad at L.B.Nagar for the offence under Section 138 of the Negotiable Instruments Act. After full-fledged trial, the trial Court has ultimately found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act and he was sentence to undergo simple imprisonment for a period of six months and to pay compensation of Rs.1,00,000/-.

c) Aggrieved by the same, the petitioner has preferred criminal appeal vide CRLA No.72 of 2010 on the file of learned Additional Metropolitan Sessions Judge, Cyberabad. The said criminal appeal was dismissed by way of judgment dated 29.02.2010 confirming the conviction judgment passed by the

trial Court. Aggrieved by the same, the present criminal revision case is filed by the petitioner - accused on the following grounds:

- i) Though the respondent failed to prove the legally enforceable doubt, the appellate Court erred in confirming the conviction and sentence imposed by the trial Court.
- ii) The Courts below ought to have seen that except filing the cheque, no other documents were filed by the complainant and mere dishonor of the cheque will not amount to offence under Section 138 of the Negotiable Instruments Act.
- iii) The Courts below failed to appreciate the evidence of PW1, who admitted in his cross-examination that he is not having any proof to show that he advanced the said amount to the petitioner – accused.
- iv) The Courts below ought to have seen that the subject cheque was never issued to the complainant but it was issued to the son-in-law of the complainant as he promised to provide a car at lowest rate and later it was misused by the complainant.

3. Heard learned counsel for the revision petitioner – accused as well as learned counsel for the respondent No.1 – complainant.

4. Now the point for determination is:

“Whether the judgment dated 29.02.2012 in Criminal Appeal No.72 of 2010 passed by the learned Additional Metropolitan Sessions Judge, Cyberabad confirming the judgment dated 18.05.2010 in C.C.No.1178 of 2007 passed by the learned Judicial Magistrate of First Class - cum Special Mobile Court – cum – XI Metropolitan Magistrate, Cyberabad at L.B.Nagar, can be set aside?

5. During the course of hearing, the learned counsel for the revision petitioner as well as learned counsel for the respondent No.1 have submitted that that parties have settled the matter and to that petitions vide I.A.Nos.1 and 2 of 2022 have been filed to record the compromise between the parties as per the terms of Memorandum of Understanding dated 09.03.2020. Accordingly both the parties were referred to the learned Secretary, Telangana High Court Legal Services Committee, for identification of the parties and also to ascertain as to whether the compromise entered by the parties was voluntary or not and

thereby to submit a report. Learned Secretary, Telangana High Court Legal Services Committee has submitted a report dated 22.10.2022 stating that the parties appeared before her and they have stated that there is no coercion on them to enter into compromise and they have fully understood the contents of the compromise terms.

6. Now the question to be considered is whether the compromise can be accepted and whether revision petition filed can be allowed on the strength of the compromise petition.

7. As per the affidavit filed in I.A.Nos. 1 and 2 of 2022 seeking permission file compromise petition and to record compromise between the petitioner and respondent, it is mentioned that both the parties have settled the dispute amicably and the revision petitioner has paid an amount of Rs.1,00,000/- vide Demand Draft bearing No.886185 towards compensation and an amount of Rs.50,000/- vide Demand Draft bearing No.886186 towards legal expenses (both demand drafts drawn on Punjab National Bank, Ring Road, L.B.Nagar) and the respondent has acknowledged the receipt of the said demand drafts. Both the parties have requested to allow the

criminal revision case by recording the compromise in terms of Memorandum of Understanding dated 09.03.2020.

8. It is to be seen that apart from Rs.1,50,000/-, which was paid by the complainant, as per the docket proceeding sheet dated 16.04.2012, the petitioner has deposited an amount of Rs.50,000/-. This amount is stated to be lying before the trial Court. As seen from the terms of MOU, there is no mention as to whom this Rs.50,000/- and interest accrued thereon belongs. Learned counsel for the revision petition has submitted that the compromise entered between the parties vide MOU dated 09.03.2020 is in respect of Rs.1,50,000/- out of which Rs.1,00,000/- is for compensation and Rs.50,000/- is towards legal expenses. However, as per the record, the revision petitioner has deposited Rs.50,000/- before the trial Court as per the order of this court dated 16.04.2012. According to the learned counsel for the revision petitioner the said amount was alleged to have been deposited by the revision petitioner on 18.04.2012 before the trial Court. Since the settlement is arrived at with the parties only in respect of Rs.1,50,000/-, which is already paid by the revision petitioner to the respondent vide demand drafts as per MOU dated 09.03.2020 and since the amount of Rs.50,000/- was deposited by the

revision petition at the instance of the Court and since the matter is settled, the revision petitioner is entitled to receive the said money of Rs.50,000/-.

9. In **State of Madhya Pradesh vs. Laxmi Narayana and others**¹, the Hon'ble Supreme Court in paragraph No. 13 has held as follows:

“13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

¹ 2019 (5) SCC 688

iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he

had managed with the complainant to enter into a compromise etc.”

10. In view of the principle laid down in the above said authority and the report of the Secretary, Telangana High Court Legal Services Committee, Hyderabad, and also the compromise entered between the revision petitioner and respondent No.1, I.A.Nos.1 and 2 of 2022 are allowed. Consequently, the Criminal Revision Case is allowed and thereby judgment dated 29.02.2012 in Criminal Appeal No.72 of 2010 passed by the learned Additional Metropolitan Sessions Judge, Cyberabad confirming the judgment dated 18.05.2010 in C.C.No.1178 of 2007 passed by the learned Judicial Magistrate of First Class - cum Special Mobile Court – cum – XI Metropolitan Magistrate, Cyberabad at L.B.Nagar, is hereby set aside. The trial Court is directed to refund Rs.50,000/- which was deposited by the revision petitioner as per the directions of this Court vide order dated 16.04.2012 in CrI.R.C.M.P.No.963 of 2012, to the revision petitioner.

As a sequel, the Miscellaneous Petitions, pending if any, shall stand closed.

Dr. D. NAGARJUN, J

Date: 31.10. 2022.
AS