THE HONOURABLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE NOS. 2137 OF 2018 AND 2477 OF 2018

COMMON ORDER:

Crl.R.C.No.2137 of 2018 is filed by the complainant aggrieved by the order dated 23.07.2018 in Crl.M.P.No.1831 of 2018 in C.C.No.11 of 2018 on the file of the III Special Magistrate, Hyderabad in dismissing the petition filed by him to punish the accused under Section 138 of the Negotiable Instruments Act (for short "NI" Act) and to direct the accused to pay twice the cheque amount.

2. Crl.R.C.No.2477 of 2018 is filed by the complainant aggrieved by the order dated 10.08.2018 in C.C.No.11 of 2018 on the file of the III Special Magistrate, Hyderabad in discharging the accused for the offence under Section 138 of the Negotiable Instruments Act, accepting the Demand Drafts filed by him towards interest and costs.

3. The case of the complainant was that he filed a private complaint under Section 138 of the NI Act. He was the owner of the land admeasuring 27 cents in Old Survey No.354, New Survey No.261/1 which was equivalent to 1306 Sq.yards situated at Balaga Village and Rural Panchayat, Srikakulam Mandal and District. The accused approached him through a mediator

Dumpala Ramarao @ Lakshmana Rao Master, to purchase the land of the complainant for a valid consideration as per the existing market rate @Rs.1,35,00,000/-, for which the complainant accepted and executed a registered sale deed bearing document No.6352 of 2017 dated 16.10.2017 at Joint Sub-Registrar Office, Srikakulam.

4. On the date of execution of sale deed, the accused and the mediator Ramarao, promised to pay the balance sale consideration of Rs.76,66,000/- after deducting card value of Rs.58,34,000/- within ten(10) days. The existing market rate in the Sub-Registrar Office according to the card of Sub-Registrar was Rs.58,34,000/-, as such in the sale deed the sale consideration was shown as Rs.58,34,000/- and for the said consideration, the accused had given cheque bearing No.186136 for Rs.48,34,000/- and another cheque (the subject matter of the complaint under Section 138 of the NI Act) bearing No.186137 for Rs.10,00,000/-. The complainant was acquainted with the mediator Ramarao since more than one decade and believing the version of the accused and on their request, executed the registered sale deed. Thereafter, the complainant deposited the 1st cheque for Rs.48,34,000/- and the same was cleared. Later, the complainant deposited the 2nd cheque bearing No.186137 in his current account in Vijaya Bank, Habsiguda Branch, Hyderabad for clearance. The said cheque

was returned on 21.10.2017 with an endorsement that it was dishonoured due to "Insufficient Funds" in the account of the accused.

5. The complainant issued a legal notice dated 27.10.2017 under Section 138 of the NI Act. The accused received the same on 30.10.2017 and gave a reply to the legal notice on 06.11.2017. Through reply legal notice, the accused requested to deposit the cheque once again, but did not send any proof in support of his contention that there was sufficient balance kept in his account, as such, the complainant filed the private complaint for issuing the subject cheque without keeping sufficient amount in his account.

6. On receipt of summons, the accused appeared before the court and filed a memo vide SR.No.3344 of 2018 on 05.06.2018 along with two (02) Demand Drafts, one for Rs.10,00,000/- towards cheque amount and another for Rs.5,000/- towards costs for the settlement of the case on the first date of hearing. The contention of the learned counsel for the accused was that the dishonour memo was issued by the bank due to technical issue though there were sufficient funds in his account by the date of issuance of the memo by the concerned bank and relied upon the judgment of the Hon'ble Apex Court in the

case of **M/S. Meters and Instruments Private Limited and another v. Kanchan Mehta**[1].

7. The learned counsel for the complainant contended before the trial court to punish the accused as per Section 138 of the NI Act and to award compensation twice the cheque amount apart from inflicting imprisonment as the case was proved for the offence under Section 138 of the NI Act, as the cheque was dishonoured for insufficiency of funds.

8. The trial court on considering the judgment of the Hon'ble Apex Court in **M/S. Meters and Instruments Private Limited and another v. Kanchan Mehta** (1 supra), opined that the objection raised by the complainant was not sustainable and as per the said judgment, awarded costs of Rs.10,000/- and directed the accused to pay interest @6% per annum on the cheque amount from the date of the cheque till 10.08.2018 and allowed the memo.

9. The complainant filed Crl.M.P.No.1831 of 2018 to punish the accused under Section 138 of the NI Act and to direct the accused to pay twice the cheque amount. The said petition was dismissed by the III Special Magistrate, Hyderabad as the memo was allowed as per the judgment of the Hon'ble Apex Court in **M/S. Meters and Instruments Private Limited and another v. Kanchan Mehta** (1 supra).

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[1]**(2018) 1 SCC 560**

10. Aggrieved by the said dismissal, the complainant preferred this revision contending that the accused cheated him without paying the balance consideration of Rs.76,66,000/-, for which he was initiating appropriate legal action. The cheque amount was only Rs.10,00,000/-. Without looking into the said aspect, the impugned order was passed by the III Special Magistrate, contrary to law. Prejudice was caused to the complainant for not awarding compensation, if sufficient compensation was not awarded by the court,the same would be contrary to law and contrary to the legislative intention. It was a proved case under Section 138 of the NI Act. The accused had to be punished with imprisonment for a term which may extend to two (2) years or with fine which may extend to twice the amount of the cheque or with both and prayed to set aside the order dated 10.08.2018 in C.C.No.11 of 2018 on the file of the III Special Magistrate, Hyderabad.

11. Since the memo filed by the accused in SR.No.3344 of 2018 was allowed on condition of depositing Demand Drafts towards costs and interest and the accused filed a memo along with two (02) Demand Drafts, one Demand Draft for Rs.5,000/- towards costs and the other Demand Draft for Rs.49,480/- @6% per annum from 16.10.2017 to 12.08.2018, the trial court discharged the accused and closed the case against the accused for the offence under Section 138 of the NI Act in C.C.No.11 of 2018.

12. Aggrieved by the same, the complainant preferred Crl.R.C.No.2477 of 2018 on the same grounds as raised in Crl.R.C.No.2137 of 2018.

13. Heard the learned counsel for the revision petitioner and the learned counsel for the respondent – accused.

14. Now the point for consideration in both these Criminal Revision Cases is whether the trial court is correct in passing the order discharging the accused on payment of the cheque amount by the accused with costs and interest on the first date of hearing.

15. The trial court relied upon the judgment of the Hon'ble Apex Court in **M/S. Meters and Instruments Private Limited and another v. Kanchan Mehta** (1 supra), in discharging the accused. Hence, it is considered necessary to extract the observations of the Hon'ble Apex Court in the above case.

16. The Hon'ble Apex Court considered the object of Section 138 of the NI Act and observed that:

> *"6. The object of introducing Section 138 and other provisions of Chapter XVII in the Act in the year 1988 was to enhance the acceptability of cheques in the settlement of liabilities. The drawer of cheque is made liable to prosecution on dishonour of cheque with safeguards to prevent harassment of honest drawers. The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 to amend the Act was brought in, inter-alia, to simplify the procedure to deal with such matters.*

The amendment includes provision for service of summons by speed post/courier, summary trial and making the offence compoundable."

"7. This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions cheques were issued merely as a device to defraud the creditors. Dishonour of cheque causes incalculable loss, injury and inconvenience to the payee and credibility of business transactions suffers a setback. At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 Amendment specifically made it compoundable. The offence was also described as 'regulatory offence'. The burden of proof was on the accused in view of presumption under Section 139 and the standard of proof was of "preponderance of probabilities". The object of the provision was described as both punitive as well as compensatory. The intention of the provision was to ensure that the complainant received the amount of cheque by way of compensation. Though proceedings under Section 138 could not be treated as civil suits for recovery, the scheme of the provision, providing for punishment with imprisonment or with fine which could extend to twice the amount of the cheque or to both, made the intention of law clear. The complainant could be given not only the cheque amount but double the amount so as to cover interest and costs. Section 357(1)(b) of the Cr. P.C. provides for payment of compensation for the loss caused by the offence out of the fine. Where fine is not imposed, compensation can be awarded under Section 357(3) Cr.P.C. to the person who suffered loss. Sentence in default can also be imposed. The object of the provision is not merely penal but to make the accused honour the negotiable instruments."

"8. In view of the above scheme, this court held that the accused could make an application for compounding at the first or second hearing in which case the court ought to allow the same. If

such application is made later, the accused was required to pay higher amount towards cost, etc. This Court has also laid down that even if the payment of the cheque amount, in terms of proviso (b) to Section 138 of the Act was not made, the Court could permit such payment being made immediately after receiving notice/summons of the court. The guidelines in ***Damodar S.Prabhu V. Sayed Babalal H., [(2010) 5 SCC 663]*** *have been held to be flexible as may be necessary in a given situation. sSince the concept of compounding involves consent of the complainant, this Court held that compounding could not be permitted merely by unilateral payment, without the consent of both the parties."*

*"9. While the object of the provision was to lend credibility to cheque transactions, the effect was that it put enormous burden on the courts' dockets. The Law Commission in its 213th Report, submitted on 24th November, 2008 noted that out of total pendency of 1.8 crore cases in the country (at that time), 38 lakh cases (about 20% of total pendency) related to Section 138 of the Act. This Court dealt with the issue of interpretation of 2002 Amendment which was incorporated for simplified and speedy trials. It was held that the said provision laid down a special code to do away with all stages and processes in regular criminal trial***.*** *This Court held that once evidence was given on affidavit, the extent and nature of examination of such witness was to be determined by the Court. The object of Section 145(2) was simpler and swifter trial procedure. Only requirement is that the evidence must be admissible and relevant. The affidavit could also prove documents. The scheme of Sections 143 to 147 of the Act was a departure from provisions of Cr.P.C. and the Evidence Act and complaints could be tried in a summary manner except where the Magistrate feels that sentence of more than one year may have to be passed. Even in such cases, the procedure to be followed may not be exactly the same as in Cr.P.C. The expression "as far as possible" in Section 143 leaves sufficient flexibility for the Magistrate so as not to affect*

> *the quick flow of the trial process. The trial has to proceed on day to day basis with endeavour to conclude the same within six months. Affidavit of the complainant can be read as evidence. Bank's slip or memo of cheque dishonour can give rise to the presumption of dishonour of the cheque, unless and until that fact was disproved."*

It further observed that,

> *"18.1. Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view of 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."*

> *"18.2. 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."*

> *"18.3. 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 has been duly compensated, can in its discretion close the proceedings and discharge the accused."*

> *"18.4. Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to*

be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C. to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases."

"18.5. Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances."

"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."

17. The contention of the learned counsel for the appellant - complainant was that plea bargaining could not be allowed, mere acceptance or admission of guilt could not be a ground for reduction of sentence. The court had to decide on merits and sentence should be commensurate with the offence and relied upon the judgment of the Hon'ble Apex Court in **State of Uttar Pradesh v. Chandrika**[2], wherein it was held that:

> *"3. It is apparent that the order passed by the High Court is, on the face of it, illegal and erroneous. It appears that the learned Judge has overlooked the settled law or is unaware that the concept of `plea bargaining' is not recognised and is against public policy under our criminal justice system. Section 320 Cr. P.C. provides for compounding of certain offences with the permission of the court and certain others even without permission of the court. Except the above, the concept of negotiated settlement in criminal cases is not permissible. This method of short-circuiting the hearing and deciding the criminal appeals or cases involving serious offences requires no encouragement. Neither the State nor the Public Prosecutor nor even the Judge can bargain that evidence would not be led or appreciated in consideration of getting flea- bite sentence by pleading guilty."*
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> *"8. Hence, it is settled law that on the basis of plea bargaining the court cannot dispose of the criminal cases. The Court has to decide it on merits. If the accused confesses his guilt, an appropriate sentence is required to be imposed. Further, the approach of the court in appeal or revisions should be to find out whether the accused is guilty or not on the basis of evidence on record. If he is guilty, an appropriate sentence is required to be imposed or maintained. If the appellant or his counsel*

[2]**(1999) 8 SCC 638**

> *submits that he is not challenging the order of conviction, as there is sufficient evidence to connect the accused with the crime, then also the court's conscience must be satisfied before passing final order that the said concession is based on the evidence on record. In such cases, sentence commensurating with the crime committed by the accused is required to be imposed. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the court that as he is pleading guilty the sentence be reduced."*

18. However, it is a case under Section 302, 307 and 34 of IPC, but not a case under Section 138 of the NI Act. There is a difference between the cases under IPC and 138 of the NI Act. The offence under Section 138 of the NI Act is primarily a civil wrong and the procedure to try the case was summary in nature.

19. The Hon'ble Apex Court, considering all the said facts and object of the Act and the enormous burden on the courts' dockets only had issued the said guidelines for disposal of the cases under Section 138 of the NI Act and observed that even in the absence of the consent by the other party, in the interest of justice on being satisfied that the complainant has been duly compensated, the court can in its discretion close the proceedings and discharge the accused.

20. As the accused appeared before the trial court on the first hearing date itself and filed a memo and came forward by depositing the cheque amount and

costs in the trial court, and the trial court also directed to pay some more amount towards costs and simple interest @6% per annum and on depositing the said amount by the accused by way of Demand Drafts and satisfied that the complainant was sufficiently compensated, closed the case and discharged the accused.

21. This Court does not find any illegality (or) impropriety (or) irregularity in the said orders of the court below.

22. In the result, the Criminal Revision Cases filed by the complainant are dismissed confirming the orders of the court below in discharging the accused.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G.RADHA RANI, J

10th January, 2023
nsk.