

NOTE : The Petitioner/ Accused was directed to be released on bail by the order of the High Court dated 29.09.2011, in CrI.R.C.No. 3054 of 2011, in CrI.R.C No. 2041 of 2011

[3251]

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**WEDNESDAY, THE ELEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL REVISION CASE NO: 2041 OF 2011

Criminal Revision Case under Section 397 & 401 of Cr.P.C. against the Judgment dated 13.09.2011 made in CrI.A.No.184 of 2010 on the file of the Court of the VII Addl. Metropolitan Sessions Judge, Hyderabad, Preferred against the Order passed in C.C. No. 159 of 2008, dated 24.05.2010, on the file of the Court of the XV Additional Judge Cum XIX Additional Chief Metropolitan magistrate, Hyderabad.

Between:

Syed Moinuddin, @ Ubead, S/o Syed Sirajuddin, Occ:Pvt. Employee, SRT 90, Sanathnagar, Hyderabad. **...PETITIONER/APPELLANT/ACCUSED**

AND

1. The State OF A.P., Represented by State Public Prosecutor, High Court of Andhra Pradesh, Hyderabad.
2. T.Shiva Prakash, S/o. T. Manilal, Business 6-1-178, Padmaraonagar, Beside Wesley Church, Secunderabad.

...RESPONDENTS/RESPONDENTS/COMPLAINANT

Counsel for the Petitioner : Sri Parampally Shamanthak Hande(Amicus Curiae)

Counsel for the Respondent No.1 : Public Prosecutor

Counsel for the Respondent No.2 : Sri Muddu Vijay

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE K. SURENDER

CRIMINAL REVISION CASE No.2041 OF 2011

ORDER:

Revision Petitioner-accused was found guilty for the offence under Section 138 of the Negotiable Instruments Act (for short 'the Act') and convicted by the learned trial Court. In appeal, the said conviction was confirmed by learned Sessions Judge.

02. Case of the complainant is that Rs.7,50,000/- was taken by accused for his domestic needs and revision petitioner issued a cheque for Rs.7,50,000/- towards discharge of the said debt. The said cheque, on presentation was dishonoured with an endorsement 'funds insufficient'. Notice was issued to accused. Accused failed to make payment of amount covered by cheque even after receiving notice. Hence, complaint was filed.

03. The learned trial Court found that accused had issued cheque towards repayment and accordingly convicted.

04. The defence taken by accused is that cheque was taken by complainant by use of force and also obtained signatures of accused on Ex.P6-Undertaking by using force. Burden is on accused to prove that cheque and undertaking were

obtained under duress. Except stating that those documents were obtained under duress, accused has not taken any steps against complainant. Further, no reply was issued by accused even after service of notice sent by complainant.

05. Having gone through the record, a complaint of cheating was also filed against accused. According to learned counsel for revision petitioner, the said case registered for the offence under Section 420 of the Indian Penal Code (for short 'IPC') resulted in conviction. Issuance of cheque and Ex.P6-Undertaking are admitted. Mere suggestion that they were taking under duress would not suffice to discharge the burden under Section 139 of the Act.

06. Learned counsel for revision petitioner submits that accused is ready to repay the amount covered by cheque.

07. Keeping in view that accused is ready to repay the cheque amount, while maintaining the conviction imposed by both Courts, this Court deems it appropriate to enhance the fine amount to Rs.8,50,000/- by setting aside the sentence of imprisonment. He shall pay the enhanced fine before the learned trial Court within a period of 8 eight weeks from today. The said

fine amount shall be given to complainant as compensation. If accused fails to pay the said fine amount within the stipulated time, he shall undergo Simple Imprisonment for a period of six months.

08. With the above modification, this Criminal Revision Case is partly allowed. Pending miscellaneous applications, if any, shall stand closed.

Sd/- B. SATYAVATHI
DEPUTY REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The VII Addl. Metropolitan Sessions Judge, Hyderabad.
2. The XV Additional Judge Cum XIX Additional Chief Metropolitan magistrate, Hyderabad.
3. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT) (Amicus Curiae)
4. One CC to Sri Parampally Shamanthak Hande, Advocate [OPUC]
5. One CC to Sri Muddu Vijay, Advocate [OPUC]
6. Two CD Copies

DL/gh



HIGH COURT

DATED:11/09/2024

ORDER

CRLRC.No.2041 of 2011



PARTLY ALLOWING THE CRIMINAL REVISION CASE.

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HMA
19/10/2024