

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

**WEDNESDAY, THE SIXTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL REVISION CASE NO: 2142 OF 2011

Criminal Revision Case under Section 397 and 401 of Cr.P.C aggrieved by the Judgment dt: 19-09-2011 passed in CRL.A.No.498 of 2010 on the file of the court of the II Addl. Metropolitan Sessions Judge for Jubilee Hills Car Bomb Blast Cases-cum- Addl. Family Court (FAC)-cum- III Addl. Metropolitan Sessions Judge, Hyderabad, preferred against the Judgment dt: 03-12-2010 in C.C.No.402 of 2009 on the file of the court of the XV Additional Judge –cum- XIX Additional Chief Metropolitan Magistrate, Hyderabad.

Between:

B.Manik Rao, S/o. B.Damodar Rao, Occ: Business R/o. Near Sangam Theatre, Bidar, Karnataka State.

...PETITIONER/Appellant/Accused.

AND

1. The State of AP., Through Public Prosecutor, High Court of A.P., Hyderabad.
2. B.Jaya Prakash Gupta, S/o. B.Srinivasulu Shetty Business R/o. H.No. 15-2-15, Gowliguda Chaman, Hyderabad.

...RESPONDENT/Respondent/Complainant.

Counsel for the Petitioner : Ms. M.SWATHI (AMICUS CURIE)
Counsel for the Respondent No.1 : SRI VIZARATH ALI,
ASST. PUBLIC PROSECUTOR
Counsel for the Respondent No.2 : SRI PALIVELA SATYARAJA BABU

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL**CRIMINAL REVISION CASE No.2142 OF 2011****ORDER:**

The present Criminal Revision Case is filed aggrieved by the judgment dated 19.09.2011 in Criminal Appeal No.498 of 2010 on the file of the learned III Additional Metropolitan Sessions Judge, at Hyderabad (for short, "the appellate Court") in modifying the judgment dated 03.12.2010 in C.C.No.402 of 2009 on the file of the learned XV Additional Judge-cum-XIX Additional Chief Metropolitan Magistrate, Hyderabad (for short, "the trial Court").

2. Heard Ms. Swathi, learned Amicus Curiae representing petitioner, Mr. Vizarath Ali, learned Assistant Public Prosecutor appearing for respondent No.1 State and Mr. Palivela Satyaraja Babu, learned counsel appearing for unofficial respondent No.2.

3. The brief facts of the case are that the petitioner/accused and respondent No.2/complainant were known to each other. Out of such acquaintance, on 03.01.2006, the accused borrowed an amount of Rs.1,00,000/- from the complainant and executed a promissory note, promising to repay the same within three months. The accused failed to pay the amount due after three

months. On repeated demand, the accused issued cheque bearing No.781827 dated 18.05.2006 for Rs.1,00,000/- drawn on Vysya Bank Limited, Bidar Branch. On presentation, the said cheque was dishonoured with an endorsement "account closed". Thereafter, the complainant issued legal notice to the accused calling upon him to pay the cheque amount within fifteen days. But the accused failed to repay the amount. Hence, the accused was alleged to have committed the offence punishable under Section 138 of the Negotiable Instruments Act (for short, "NI Act").

4. The trial Court vide judgment cited *supra*, found the accused guilty for the offence punishable under Section 138 of the NI Act and sentenced him to suffer simple imprisonment for a period of six months and pay fine of Rs.10,000/-. In default of payment of fine, the accused was directed to suffer simple imprisonment for one month. Aggrieved thereby, the petitioner preferred an appeal.

5. The appellate Court vide judgment cited *supra*, dismissed the appeal, however, reduced the sentence of imprisonment imposed against the petitioner from six months to four months

without touching the amount of fine. Assailing the same, the present Revision.

6. Learned counsel for the petitioner contended that the trial Court as well as the appellate Court failed to appreciate the evidence available on record in proper perspective and passed their respective judgments. Therefore, she seeks to set aside the impugned judgment.

7. Learned Assistant Public Prosecutor and learned counsel for respondent No.2 submitted that the trial Court as well as the appellate Court, upon appreciating the evidence available on record in right perspective, passed their respective judgments and the interference of this Court is unwarranted. Therefore, learned counsel seek to dismiss the Revision.

8. On behalf of the prosecution, the trial Court examined respondent No.2 himself as PW1 and marked Exs P1 to P7, C1. On behalf of the defence, DWs.1 and 2 were examined and no document was marked. Upon careful scrutiny of the evidence available on record, the trial Court found that the promissory note and the cheque are found to be with the signatures of the accused and in the absence of any other evidence being adduced, the trial Court held that they were executed by the accused

himself. Therefore, the presumption under Section 139 of the NI Act comes into play. Moreover, DWs.1 and 2 entered into the witness box but nothing contra was proved except their self serving testimonies. The service of notice effected upon the accused was found to be proper and the accused deliberately refused to receive the notice sent under registered post. Hence, the trial Court found that the accused was guilty of the alleged offence and rendered the judgment cited *supra*.

9. The appellate Court upon re-appreciating the evidence available on record observed that the stand taken by the accused on the execution of the cheque was not clear and the evidence of the complainant was found to be convincing. Therefore, on the basis of the available evidence, the appellate Court held that the accused was guilty of the alleged offence and reduced the sentence imposed against the accused to four months without touching the amount of fine.

10. A perusal of the record shows that this Court vide order dated 03.11.2011 suspended the sentence of imprisonment alone imposed against the petitioner, pending Revision and ordered him to be released on bail on executing a bond for Rs.5,000/- with one surety for the likesum each to the satisfaction of the learned

XIX Additional Chief Metropolitan Magistrate, Hyderabad.
Thereafter, the matter underwent several adjournments.

11. In the present case on hand, both the Courts held that petitioner/accused was guilty for the offence under Section 138 of NI Act, which finding, in my considered view, does not call for any interference, in the exercise of revisional jurisdiction under Section 397 Cr.P.C. There are no grounds much less valid grounds to interfere with the well considered judgments passed by both the Courts.

12. Having regard to the submissions made by all the learned counsel and relying upon the decisions passed by the Hon'ble Supreme Court in **Damodar S. Prabhu Vs. Sayed Babalal¹**, **R. Vijayan Vs. Baby²**, **S.R. Sunil & Company Vs. D. Srinivasavaradan³**, **Mainuddin Abdul Sattar Shaikh Vs. Vijay D. Salvi⁴** and **Somnath Sarkar Vs. Utpal Basu Mallick⁵**, this Court is inclined to reduce the sentence imposed against the petitioner to the period of imprisonment already undergone by him.

¹ 2010 (5) SCC 663

² (2012) 1 SCC 260

³ (2014) 16 SCC 32

⁴ (2015) 9 SCC 622

⁵ 2013 (16) SCC 465

13. The petitioner is directed to deposit an amount of Rs.50,000/- as fine to the credit of the trial Court within one year from today. Out of which, Rs.45,000/- was directed to be paid to respondent No.2 and Rs.5,000/- shall remain with the State.

14. Upon such deposit, the respondent No.2/complainant is directed to withdraw an amount of Rs.45,000/- with immediate effect.

15. If the petitioner fails to comply with the aforesaid direction, the judgment dated 19.09.2011 in Criminal Appeal No.498 of 2010 on the file of the learned III Additional Metropolitan Sessions Judge, at Hyderabad stands good in all respects.

16. With the above direction, the Criminal Revision Case is disposed of. Needless to mention, the petitioner is at liberty to work out the remedies available under law.

Miscellaneous Petitions, pending if any, shall stand closed.

Sd/- B. SATYAVATHI
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The II Addl. Metropolitan Sessions Judge for Jubilee Hills Car Bomb Blast Cases-cum- Addl. Family Court (FAC)-cum-III 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. [OPUC]
4. One CC to SRI. M SWATHI (AMICUS CURIE) Advocate [OPUC]
5. One CC to SRI. PALIVELA SATYARAJA BABU Advocate [OPUC]
6. Two CD copies.

CHR

cvk

HIGH COURT

DATED:06/03/2024

ORDER

CRLRC.No.2142 of 2011



CRLRC IS DISPOSED OF.

⑨ CHR
4/4/24