

(2014) 11 KAR CK 0017

In the Karnataka High Court

Case No : Criminal Revision Petition No. 880 of 2013

B.B. Subbamma

APPELLANT

Vs

Mujeeb Ahamed

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 11 KAR CK 0017

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : M. Raghavendra, Advocate for the Appellant; A. Lourdu Mariyappa, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. The petitioner was the accused before the Trial Court, in a case alleging an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the NI Act", for brevity). It was the case of the complainant/respondent that the petitioner had borrowed a sum of Rs. 2,50,000/- and in repayment of the same, had issued a cheque bearing No. 778732 dated 23.3.2007 drawn on Canara Bank, Madikeri, which when presented for encashment was returned with the banker's endorsement that the funds were insufficient in the account. Thereafter, the complainant had issued a notice of demand as contemplated under Section 138 of the NI Act. When the demand was not met, a complaint followed. The petitioner herein having entered appearance had denied the liability. It was held against the petitioner and she was convicted and sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs. 2,000/-. The compensation of Rs. 5,00,000/- was awarded under Section 357 the Code of Criminal Procedure, 1973. There is an unexplicable order that out of the compensation amount a sum

of Rs. 1,00,000/- shall be paid as fine to the State. The same having been questioned in appeal, the Appellate Court has merely affirmed the judgment of the Trial Court. It is this, which is under challenge in the present petition.

3. Having considered the case of the petitioner, the cheque amount was Rs. 2,50,000/-. The petitioner having been found guilty of the offence punishable under Section 138 of the NI Act, the Court has sentenced the petitioner to undergo simple imprisonment and has imposed a fine of Rs. 2,000/-. Further, award of compensation of Rs. 5,00,000/- to the complainant and that fine be paid out of that compensation amount, is not contemplated in law and could not have been granted by the court below. Further, even in terms of Section 138 of the NI Act, that power is conferred on the Court to impose a fine which may extend to twice the amount of the cheque amount and the compensation amount if it is treated as fine far exceeds the amount prescribed in the Act. It would also be necessary to point out that it is not always necessary for the Court to mechanically invoke the power under the Section to impose a fine, twice the amount of the cheque and also award the same as compensation as if the complainant was in a suit for recovery of money and the manner in which the Trial Court has dealt with the matter is found wanting. The Appellate Court has overlooked the same. Hence, in the interest of justice, it would be necessary to reduce the fine imposed for the offence punishable under Section 138 of the NI Act, substantially to Rs. 2,80,000/- of which Rs. 2,75,000/-, shall be paid as compensation to the complainant. The petitioner has already deposited a sum of Rs. 75,000/- before the Trial Court. The complainant is directed to withdraw the same. The petitioner shall deposit a further sum of Rs. 2,05,000/- within a period of four weeks before the Trial Court which the complainant is permitted to withdraw. In the event of default of such deposit, the petitioner shall suffer simple imprisonment for a period of six months. Accordingly, the petition stands disposed of.