

(2000) 03 AP CK 0033

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5202 of 1999

Jonnadula Mallikarjuna Rao

APPELLANT

Vs

Dodda Venkata Subbareddy and Another

RESPONDENT

Date of Decision : 21-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 29(2), 357, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2000) 1 ALD(Cri) 678 : (2000) 3 APLJ 146 : (2001) CriLJ 2008

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Ravindra Babu, for the Appellant; V.S.R. Anjaneyulu and Public Prosecutor, for the Respondent

Judgement

Vaman Rao, J.—Heard.

2. This Criminal Petition is filed u/s 482 of Criminal Procedure Code seeks quashing of the order of the III Additional Sessions Judge, Guntur passed in CrI. M.P. No. 387 of 1997 in CrI. A. No. 485 of 1999 dated 23-9-1999 under which the learned Sessions Judge while dealing with the application for suspending the sentence imposed against the petitioner by the trial Court having convicted for offence u/s 138 of Negotiable Instruments Act, directed the petitioner to furnish personal bond of Rs. 10,000/- with two sureties each for a like sum and further directed the petitioner to pay half of the balance of the fine amount of Rs. 65,000/- in two instalments.

3. It is this part of the direction requiring the petitioner to deposit half of the fine amount of Rs. 65,000/- in two instalments as a condition for suspending the sentence imposed by the Court below, which is now sought to be questioned in this petition.

4. The facts germane to this petition may be stated briefly as follows. The petitioner was convicted for the offence u/s 138 of Negotiable Instruments Act by

the I Additional Munsif Magistrate, Tenali and was sentenced to undergo imprisonment for six months and to pay fine of Rs. 66,038/- out of which the learned Magistrate directed that the complainant was entitled to receive a sum of Rs. 65,000/-. The contention of the learned counsel for the petitioner is that imposition of sentence of fine of Rs. 66,038/- is illegal being in contravention of Section 29(2) of the Criminal Procedure Code, (for short "Cr.P.C."), and as such the order of the learned Sessions Judge directing the petitioner to deposit half of that fine amount as a condition for suspending the execution of the sentence is also illegal. Learned counsel for the petitioner seeks to rely on the judgment of the Supreme Court in the case of K. Bhaskaran v. Sankaran Vaidhyan Balan, ((1) 1999 Supreme Court on Line Case No. 590):(1990 Cri LJ 4606), a copy of which has been made available to this Court now. In that judgment the Supreme Court has very clearly held that the powers of the Magistrate in respect of imposing sentence of fine are controlled by the provisions in Section 29(2) of Cr.P.C. and that in no case can a Magistrate impose a fine exceeding Rs. 5000/- as provided u/s 29(2) of Cr.P.C. Sri. V.S.R. Anjaneyulu, learned counsel for the first respondent on the other hand contends that the restriction as to the quantum of fine which a Magistrate can impose u/s 29(2) of Cr.P.C. does not apply to award of Compensation to the complainant u/s 357 of Cr.P.C. Learned Counsel for the respondent relies on the observations of the Supreme Court in K. Bhaskaran's case (1 supra) to the effect that the Magistrate can award compensation u/s 357 of Cr.P.C. , without regard to pecuniary limits in respect of imposing fine u/s 29(2) of Cr.P.C.

5. It is true that if a Magistrate proposes to proceed u/s 357 of Cr.P.C., for awarding compensation to the complainant, the question of pecuniary limits as contemplated u/s 29(2) of Cr.P.C., being applicable does not arise. But the real question, is, once the Magistrate proceeds to impose fine as a part of sentence, the quantum of fine that he can impose is necessarily restricted by the provisions u/s 29(2) of Cr.P.C. It is further pertinent to note that option to award compensation u/s 357, Cr.P.C. without reference to pecuniary limits for imposing fine is available only when fine is not a part of the sentence imposed by the Magistrate. In this case as seen from para 16 of the judgment of the I Additional Munsif Magistrate, the Magistrate specifically indicated that he sentenced the accused to undergo simple imprisonment for a period of six months and also to pay fine of Rs. 66,038/-. There can be no manner of doubt that the direction of the learned Magistrate to pay a sum of Rs. 65,000/- to the complainant was only out of the fine so imposed. The contention of the learned counsel for the respondent that though the Magistrate, used the word "fine", that must be read as Compensation as contemplated u/s 357 of Cr.P.C., has to be mentioned only to be rejected. When the Magistrate specifically proceeded to impose fine, it can be construed only as fine imposed under the powers vested in the Magistrate in that behalf. A fine so imposed cannot be equated with compensation " awarded u/s 357 of Cr.P.C. In fact sub-section (3) of Section 357 of Cr.P.C. makes it abundantly clear that the question of awarding compensation u/s 357 of Cr.P.C.

would arise only when fine does not form part of the sentence imposed by the Magistrate. It is therefore, apparent that the fine imposed by the learned Magistrate is certainly in excess of the pecuniary limits restricting his powers in that behalf. In that view of the matter, the order of the learned Sessions Judge imposing a condition of depositing half of the balance amount of Rs. 65,000/- as a condition precedent for suspending the sentence cannot be sustained. Under these circumstances, to secure the ends of justice, it is necessary to quash the order dated 23-9-1999 in CrI. M.P.N. 387 of 1999 in CrI. A. No. 485 of 1999 passed by the learned III Additional Sessions Judge, Guntur and the same is accordingly quashed. The requirement as to deposit of the amount by the petitioner towards payment of fine shall be limited to total amount of Rs. 5,000/- for which the petitioner is given ten days to deposit. It is made clear that the observations made above are on the basis of the judgment pronounced and the sentence imposed by the learned Magistrate. It does not preclude the learned Sessions Judge to deal with the matter while hearing the appeal in such manner as he consider proper in accordance with law.

6. With the above directions, the Criminal Petition is disposed of.