
(2016) 06 AP CK 0042

In the Andhra Pradesh High Court

Case No : CrI. RC No. 481 of 2016 and Batch

Sanjay Kumar Agarwal

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 27-06-2016

Acts Referred:

Citation : (2016) 2 AndhLDCriminal 681

Hon'ble Judges : Raja Elango, J.

Bench : Single Bench

Advocate : Sharad Sanghi, Public Prosecutor (TS), G.M. Mobiuddin, Kalyan C.R, Advocates, for the Petitioner

Final Decision : Disposed Off

Judgement

Raja Elango, J.—Since the issue involved in all the above revision cases and the parties are one and the same, all the revisions are heard together and being disposed of by this common order.

2. The petitioner filed the above revisions challenging the order dated 11.12.2015 passed in Memo SR Nos.2556, 2558, 2562, 2559, 2557, 2555, 2560 and 2561 of 2015 in CC Nos. 162, 161, 156, 159, 163, 160, 158 and 157 of 2015 respectively, by the XV Additional Judge-cum-XIX Additional Chief Metropolitan Magistrate, Hyderabad.

3. Brief facts of the case are as follows:

The petitioner filed the complaints in the above CCs against respondents 2 to 4 for the offence under Section 138 of the Negotiable Instruments Act. It is stated in the complaints that there are civil disputes among respondents Nos.2 to 4 the complainant and others and that a civil suit was tiled vide OS No.695 of 2008 on the file of the XII Additional Chief Judge (FTC), City Civil Court, Hyderabad and during the pendency of the said suit, due to intervention of elders, the matter was compromised and respondents Nos.2 to 4 herein agreed to pay an amount of Rs. 70,11,000/- to the petitioner-complainant. Believing the same, the

petitioner-complainant agreed for closure of the suit. The said suit was closed before the Lok Adalat, City Civil Court, Hyderabad on 18.12.2014. Thereafter, respondent Nos.2 to 4 paid some amount and for the remaining amount of Rs. 60 lakhs, the 2nd respondent issued eight cheques. But on presentation, the said cheques were dishonoured. Hence, the petitioner filed eight complaints against eight cheques. During pendency of the above CCs, the 2nd respondent filed the above memos stating that he intends to pay the amount covered under the eight cheques and claimed in all the above CCs by way of demand drafts. The 2nd respondent prayed to receive the said demand drafts. The petitioner-complainant raised objection before the Court below stating that he is not ready and willing to accept the amounts or to compound the offence. The learned Magistrate passed the orders impugned on each memo as follows:

"in the result, the memo is accepted leading to the compounding of the offence under Section 138 of the Negotiable Instruments Act subject to depositing of 50% of the cheques amount of the Metropolitan Legal Services Authority as costs and 5% of the cheques amount in addition to the cheque amount already deposited by way of demand drafts to the complainant on or before 21st December, 2015."

Aggrieved by the said orders, the petitioner-complainant filed the present revisions.

4. The main contention of the learned Counsel for the petitioner is that since the petitioner is the complainant, his consent cannot be washed away nor the same can be substituted by virtue of Section 147 of the Negotiable Instruments Act while ordering compounding of the offence. He further submitted that the petitioner has to file an application for compounding an offence, if there is any such compromise between the parties, and that on the memo filed by the accused-persons. The Court is not empowered to pass any orders compounding the offence in spite of the objection raised by the petitioner-complainant for compounding the offence and that the approach of the learned Magistrate in passing the orders under revisions by giving go-by to all the requirements of Section 320 Cr.P.C., is not sustainable. He further submitted that the petitioner has no intention to compound the offence.

5. Learned Counsel appearing for respondents Nos.2 to 4 submitted that when the accused intend to pay the amount, the offence can be compounded in view of Section 147 of the Negotiable Instruments Act and that the orders under revisions do not warrant any interference by his Court.

6. As can be seen from the material on record, it is obvious that the petitioner-complainant raised objection on the memos filed by the accused for accepting the demand drafts for the amounts covered under the cheques in question and for compounding the offence. In spite of the objection raised by the petitioner against the compounding of the offence, the Court below passed the orders under revisions. Therefore, the approach of (he trial Court in passing the orders

under revisions cannot be justified.

7. Apart from that, as it is rightly pointed out by the learned Counsel for the petitioner, when there is any settlement between the parties, the application for compounding the offence should be filed by petitioner as per the provisions under Section 320 Cr.P.C. The question of compounding the offence in question would be arisen only when the complainant gave consent or filed an application seeking permission of the Court to compound the same. In the absence of any such consent or application by the petitioner-complainant, the Court is not empowered to compel any complainant/victim to compound the offence. In view of the same, this Court is of the view that the orders under revisions are liable to be set aside.

8. At this stage, the learned Counsel for respondents 2 to 4 submitted that since there is no legally enforceable debt, the present complaints made by the petitioner are not maintainable.

9. The above contention raised by the learned Counsel for respondent Nos.2 to 4 is a matter to be adjudicated by the trial Court and it cannot be decided by this Court since the scope of these revisions is very limited and since the present revisions are filed challenging the orders passed by the trial Court on the memos filed by the accused, by invoking the provisions under Section 147 of the Negotiable Instruments Act. However, respondent Nos.2 to 4 can raise the above contention before the trial Court.

10. The learned Counsel for respondents 2 to 4 prayed for return of the amounts deposited towards costs payable to the Metropolitan Legal Services Authority as per the orders of the trial Court.

11. In the above circumstance, the orders under revisions are set aside. The learned XV Additional Judge-cum-XIX Additional Chief Metropolitan Magistrate, Hyderabad is directed to proceed with the above CCs and dispose of the same in accordance with law. The presence of respondents 2 to 4 before the trial Court in the above CCs is dispensed with, except on the dates when their presence is specifically insisted by the trial Court. It is made clear that respondent Nos.2 to 4 can file an application before the trial Court for return of the amounts deposited towards costs payable to the Metropolitan Legal Services Authority. On such application being filed, the trial Court is directed to pass appropriate orders.

12. Accordingly, all the above criminal revision cases are disposed of. Consequently, miscellaneous petitions pending, if any, shall stand closed.