

(2012) 10 KAR CK 0059

In the Karnataka High Court

Case No : Criminal Revision Petition No. 996 of 2011

Sree Jwalamalinidevi Financiers (Regd) No. 3, Ground Floor, APPELLANT
N.S. Bhavan, 4th Main, 4th Cross, Gandhinagar,
Bangalore-560009, Smt. J. Padmalatha and Smt. G.B.
Sunanda

Vs

The Karnataka Housing Board Bangalore, Superintendent RESPONDENT
Engineer, National Games Division, Karnataka Housing Board,
Bangalore and State of Karnataka

Date of Decision : 18-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 313
Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (2012) 10 KAR CK 0059

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : M.I. Arun, for the Appellant; D.N. Arun Kumar, for R1, Sri H.S. Chandramouli, SPP and Sri Vijayakumar Majage, HCGP for R2, for the Respondent

Judgement

A.N. Venugopala Gowda

1. Petitioners were prosecuted by the respondent for an offence punishable under S. 138 of the Negotiable Instruments Act ("the Act" for short). Petitioners were found guilty and by a judgment dated 7.10.2005, were sentenced to pay fine of Rs. 1,75,00,000/-, in default to undergo simple imprisonment for a period of two years. Out of the amount realised as fine, Rs. 1,50,00,000/- was ordered to be paid to the complainant as compensation. An appeal filed by the accused was dismissed by the Presiding Officer, Fast Track Court, Bangalore City, on 17.6.2011. Assailing the said judgments and orders, the accused have filed this Criminal Revision Petition. Respondent had deposited with the 1st petitioner, Rs. 1,67,08,398/- in 5 Fixed Deposits between 5.6.1996 to 3.9.1996. The deposits were for a period of 5 years, all redeemable during 2001. The Fixed Deposits was to carry 18.% interest p.a. Respondent having sought premature return of the

amount deposited, petitioners issued a post dated cheque for payment of Rs. 1,87,08,520/-. The cheque was due for payment on 28.2.1997. Before the said cheque become due for payment, petitioners issued a cheque for Rs. 25,00,000/- and paid under a Demand Draft dated 17.3.1997 another sum of Rs. 25,00,000/-. The said post dated cheque (Ex.P2) was presented for payment on 4.7.1997. The cheque was returned on 5.7.1997 with an endorsement "payment stopped" (Ex.P4). Respondent/complainant issued demand notice to pay the cheque amount, on 10.7.1997 (Ex.P5). The demand notice was posted on 11.7.1997 (Ex.P6) The notice sent by RPAD was served on 15.7.1997 and a reply dated 17.7.1997 was sent. Since the cheque amount was not paid, the petitioners were prosecuted for the offence punishable under S. 138 of the Act.

2. For the complainant, PW.1 deposed, through whom Exs.P1 to P25 were marked. PW.1 was cross-examined. Accused were examined under S. 313 Cr.P.C. and it is a case of denial. Accused did not adduce defense evidence. Finding the stand taken in the defence by way of cross-examination of PW.1 to be untenable, the issuance of the cheque Ex.P2 being not in dispute and the cheque having not been honoured by petitioners' bank for want of sufficient funds, which was followed by a demand in writing i.e., for payment of the cheque amount, ingredients of the offence under S. 138 of the Act having been established, by raising presumption under S. 139 of the Act, accused were found guilty of the offence punishable under S. 138 of the Act Judgment of conviction and order of sentence, noticed supra, was passed.

3. On an appeal being filed by the accused, learned Appellate Judge, upon re-appreciation of evidence, finding that the defence put forth by way of cross-examination of PW.1 to be untenable and as having not been probabalised, dismissed the appeal.

4. Sri M.I. Arun, learned counsel appearing for the petitioners, while arguing the matter on 22.9.1012, submitted that the challenge in the matter is restricted to the sentence aspect only. The challenge to the judgment of conviction for the offence punishable under S. 138 of the Act was given up.

5. Sri M.I. Arun submitted that the Trial Court and the Appellate Court have taken notice of the fact that the petitioners have shown bona fides by remitting the amount on various occasions and in the circumstances, the fine imposed is irrational. Learned counsel submitted that Rs. 50,00,000/- was paid by the accused to the complainant even prior to the filing of criminal case and that during the pendency of the matter before the Courts below, the petitioners have deposited Rs. 1,50,00,000/- and in the circumstances, the sentence to pay fine of Rs. 1,75,00,000/- is irrational and warrants interference. Learned counsel submitted that though Rs. 1,50,00,000/- was deposited, the Trial Court has released in favour of the complainant Rs. 1,25,00,000/- and has retained the balance amount for being credited to the Government and thus has committed an illegality.

6. Sri D.N. Arun Kumar, learned counsel appearing for the complainant/respondent, does not dispute the payment which has been received from the petitioners prior to the institution of the complaint and also during the pendency of the matter before the Courts below. Learned counsel submitted that the Trial Court ought to have released out of the fine amount deposited, the compensation amount in the first instance to the complainant and the balance amount, if any, ought to have been credited to the Government. Learned counsel took exception for the Trial Court releasing only Rs. 1,25,00,000/- and retaining the balance amount of Rs. 25,00,000/- for being credited to the Government.

7. Taking into consideration the sum of Rs. 25,00,000/- which has been deposited by the accused having been retained by the Trial Court for being credited to the Government, learned SPP was directed to accept notice and make submissions in the matter. I had the benefit of hearing Sri H.S. Chandramouli, learned SPP, ably assisted by Sri Vijyakumar Majage, learned HCGP.

8. In view of the rival contentions and the record of the case, only point for consideration is, whether the learned Trial Judge is justified in sentencing the accused to pay fine of Rs. 1,75,00,000/- as against the legal liability to pay Rs. 1,37,08,520/-?

9. After filing of the private complaint under S. 200 Cr.P.C. against the petitioner, the complainant filed O.S. No. 1393/2000, to pass a decree for recovery of money kept in 5 Fixed Deposits between 5.6.1996 to 3.9.1996, in all amounting to Rs. 1,67,08,398/-. The suit was decreed on 7.9.2000. To execute the said decree, an execution case has been filed and the same is pending.

10. On an application filed by the accused/petitioners, the Trial Court had passed an order of discharge on 17.11.1998. Said order was questioned by the respondent/complainant in Crl.R.P. No. 169/1999 before this Court. On 22.8.2000 it was submitted on behalf of the petitioners that they have entered into negotiations with the complainant Board, the main purpose being to avail sufficient time to repay the remaining amount and that therefore the matter be adjourned by four weeks. The submission made on behalf of the petitioners through the learned counsel was recorded and the matter was adjourned (Ex.P25). Since the petitioners did not act in terms of the undertaking given before this Court vide Ex.P25, the case having been tried, the learned Magistrate rightly found the accused guilty based on the correct appreciation of the materials which has been brought on record by the complainant.

11. The legal liability of the petitioners, after taking into consideration the amount paid during the pendency of the matter was determined by the Trial Court at Rs. 1,37,08,520/-. Hence, from the fine amount, Rs. 1,50,00,000/- was ordered to be paid as compensation to the complainant. Ex.P2 having been issued for payment of Rs. 1,75,00,000/-, payment of certain sums having been made in installments during the pendency of the matter, the learned Trial Judge having found the legal liability at Rs. 1,37,08,520/-, is not justified in sentencing

the petitioners to pay fine of Rs. 1,75,00,000/-. The fine amount imposed, in the facts and circumstances of the case, is highly excessive and irrational. Learned Appellate Judge has not examined the irrational aspect of the sentence of fine is concerned. Hence interference in the matter i.e., with regard to the sentence of fine is warranted.

In the result, while maintaining the judgment of conviction for the offence under S. 138 of the Act passed against the petitioners, the sentence to pay fine of Rs. 1,75,00,000/- with default stipulation is modified. The petitioners are sentenced to pay fine of Rs. 1,51,00,000/-. Out of the fine amount, Rs. 1,50,00,000/- be paid to the complainant as compensation and the balance amount credited to the Government.

Two months" time is granted to the petitioners for depositing of the balance fine amount. In case of default, petitioners 2 and 3 shall undergo simple imprisonment for a period of two months. The bail bond and surety bond shall stand cancelled, if the balance fine amount is not deposited in the Trial Court, within the time allowed.

Petition is disposed of accordingly.