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M/S. CRANEX LTD. AND ANR.

v

M/S. NAGARJUNA FINANCE LTD. AND ANR.

SEPTEMBER 14, 2000

B

[M. JAGANNADHA RAO AND M.B. SHAH. JJ.]

Negotiable Instruments Act, 1881

C

S.138—Appellant-2 representing Appellant-1 firm convicted and sentenced to 6 months R.I—Both appellants directed to pay a fine of Rs. 10,000 each—Appeal—Interlocutory applications filed before appellate court dismissed—Revision also dismissed by High Court—Pending appeal before Supreme Court arising out of interlocutory applications, parties entered into settlement—Consequently, appellants deposited the amount before appellate court—Held, in the circumstances, order passed by High Court on interlocutory applications set aside—Matter remitted to appellate court for disposal—On merits it will be open to appellate court even to set aside the conviction in accordance with law—Otherwise it has power to convict, or direct sentence of imprisonment or fine—Appellate court will also consider whether the conviction is to be maintained or an order of imposition of fine is to be passed in the light of the statement by counsel for respondents that if amount deposited is permitted to be withdrawn it will not press before appellate court for conviction, imprisonment or fine.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.

789 of 2000.

From the Judgment and Order dated 21.3.2000 of the Andhra Pradesh High Court in CrI. R.C. No. 91 of 2000.

R. Venugopal Reddy and Mrs. S. Usha Reddy for the Appellants.

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A. Subba Rao for the Respondents.

The following Order of the Court was delivered :

Leave granted. The case involves a settlement of the money claim during the pendency of a criminal appeal arising out of proceedings under

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Section 138 of the Negotiable instruments Act. The main appeal, namely Criminal Appeal No. 59/99, against the conviction is pending before the VIth Additional Metropolitan Sessions Judge, Secunderabad in the matter arising under Section 138 of the Negotiable Instruments Act. That is an appeal against the order dated 8.2.99 of the XVth Metropolitan Magistrate, Hyderabad, Sentencing the appellant No. 2, representing the firm, to undergo rigorous imprisonment for 6 months and further to pay a fine of Rs. 10,000 or in default, to undergo simple imprisonment for a further period of 3 months. There is also a direction against the 2nd appellant representing the 1st appellant Company, to pay a fine of Rs. 10,000 or in default to undergo simple imprisonment for 3 months. The appeal against the conviction and sentence is pending as aforesaid, before the VI Additional Metropolitan Sessions Judge, Secunderabad.

At that stage, it appears that some interlocutory applications were filed by the appellants in the appellate Court and the said applications were dismissed. Against the said order a revision case No. 91/2000 was filed in the High Court and it was also dismissed. This appeal has been preferred against the said order passed by the High Court in the interlocutory proceedings.

During the pendency of the case, there appears to be a settlement of the money-dispute between the parties. On 24.8.2000 this Court passed an order as follows :

“Learned counsel for the petitioners states that the petitioners would deposit the cheque amount (Rs. 5,96,688) which was dishonoured within three weeks from today before the XV Metropolitan Magistrate, Hyderabad. In this view of the matter, stand over for three weeks. Application for substituting the name of Mr. S.C. Agrawal as Managing Director of the petitioner No. 1’s firm in place of Mr. Piyus Agrawal, Managing Director is allowed”.

It appears, subsequent to the said order, the appellant has deposited a sum of Rs. 5,96,688 in the Court of the XV Metropolitan Magistrate, Hyderabad. A Certificate to that effect issued by the said Court has been filed by the counsel for the petitioners, in this Court.

In the light of the subsequent developments in the case, we are of the view that the order passed in the Interlocutory application be set aside and the matter be remitted to the Appellate Court where the appeal is pending. We order accordingly.

- A** The appellate Court will consider the subsequent events, namely, of the appellant having paid a sum of Rs. 5,96,688 under a settlement to the 1st respondent and will dispose of the appeal in accordance with law. On merits, it will be open even to set aside the conviction in accordance with law. Otherwise, it has power to convict or direct sentence of imprisonment or fine.
- B** The appellate Court can therefore take the subsequent events into account and pass such order as it may deem fit in the appeal. Under Section 138 the Court can, if it is inclined to convict, pass an order of imprisonment or even fine.

- C** The impugned order passed by the High Court in the present interlocutory proceedings is set aside and the matter is remanded to the Appellate Court, namely the VIth Additional Metropolitan Sessions Judge, Secunderabad, as stated above.

- D** We also record the statement of the learned counsel for the respondent that if the amount deposited is permitted to be withdrawn by the first respondent, then the 1st respondent will not press before the Appellate Court for a conviction or for a sentence be it for imprisonment or fine. In such circumstances, the Appellate Court will consider whether the conviction is to be maintained or an order of imposition of fine is to be passed, in the light of the stand taken by the counsel for the 1st respondent.

- E** We direct the Court in which the deposit has been made, to allow the 1st respondent to withdraw the amount accordingly. With the above directions the appeal is disposed of.

R.P.

Appeal disposed of.