

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE TWENTY NINTH DAY OF JULY
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SMT JUSTICE JUVVADI SRIDEVI

CRIMINAL REVISION CASE NO: 1891 OF 2014

Criminal Revision Case under Section 397 & 401 of Cr.P.C against the Order dated 11.06.2014 Passed in Crl.M.P.No.689/2014 on the file of the Court of the Metropolitan Sessions Judge, Hyderabad .

Between:

M/S. DILIP METAL INDUSTRIES, Rep.by its proprietor Pavan S.Kanugo sio Sumermal Kanugo, having its office at shop No.16,Lala commercial complex, Lala temple, Hill Street Ranigunj, Secunderabad rep.by Its authorized rep. S.Gangadhar S/o S.Anjaneyulu, aged 45 yrs Sanathnagar, Hyderabad

...PETITIONER/ PETITIONER

AND

1. M/S. JALARAM INDUSTRIES, rep.by Its prop.K.Jagdish, age 50 years, Office at 1-5-489, Bakaram Musheerabad, Hyderabad
2. K. Jagdish, aged 50 years, Occ: Prop of M/s Jalaram Industries Office at 1-5-489, Bakaram Musheerabad, Hyderabad .

...RESPONDENTS/RESPONDENTS

3. State of Telangana, Rep.by Public Prosecutor High Court, Hyderabad .

...RESPONDENT

Counsel for the Petitioner :SRI. J PRABHAKAR

Counsel for the Respondent No.1 &2 : ---

Counsel for the Respondent No.3 : PUBLIC PROSECUTOR (TG)

The Court made the following: ORDER

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

CRIMINAL REVISION CASE No.1891 of 2014

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of Cr.P.C., is filed under Sections 397 and 401 Cr.P.C. aggrieved by the order dated 11.06.2014 in CrI.M.P.No.689 of 2014 passed by the Court of Metropolitan Sessions Judge, Hyderabad.

2 The facts in nutshell are that the petitioner being complainant filed C.C.No.203 of 2013 against the respondent Nos.1 and 2 herein for the offence punishable under Section 138 of the Negotiable Instruments Act on the file of the Court of the XI Special Magistrate, Secunderabad. The learned trial Court, after full fledged trial, found the respondents not guilty of the said offence and acquitted them accordingly by judgment dated 20.12.2013. Aggrieved thereby the petitioner filed criminal appeal before the Metropolitan Sessions Judge, Hyderabad. However, as there was delay of 52 days in filing the appeal, the petitioner filed CrI.M.P.No.689 of 2014 for condonation of the delay of 52 days in preferring the criminal appeal. But, the learned Metropolitan Sessions Judge, dismissed the said application holding that there are no merits in the case. Hence the present Criminal Revision Case.

3 Heard the learned counsel for the petitioner and perused the material available on record.

4 The learned counsel for the petitioner relied on the decision of a division bench of this Court in **P.Vijaya Laxmi V. S.P.Sravana and another**¹.

5 The broad issue arising for consideration is whether an appeal would lie to the Sessions Court under the proviso to Section 372 of the Code of Criminal Procedure against an order of acquittal in a case arising out of a private complaint, by treating the complainant therein as a 'victim' within the meaning of Section 2(wa) of the Code.

6 Section 2 (wa) was inserted in the Code by Act 5 of 2009, with effect from 31.12.2009 and defines a 'victim' as under:

"Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'Victim' includes his or her guardian or legal heir."

7 As the accused in a cheque-dishonour case under Section 138 of Negotiable Instruments Act, 1881 is not charged since the procedure to be followed is summons in nature because of the punishment being two years only on conviction, the complainant in such a case, though he may suffer loss and injury by the omission of the accused to pay his dues, cannot be brought within the ambit of a 'victim' as defined in Section 2

¹ 2018 (1) AHD (Cr.) 370

(wa) of the Code. Hence the complainant in a cheque-dishonour complaint case under Section 138 of the Act of 1881 cannot be categorized as 'victim' in terms of the definition under Section 2 (wa) of the Code and such a complainant would not be entitled to avail the remedy of appeal under the proviso to Section 372 of the Code and must continue to avail the special remedy of appeal provided under Section 378 (4) of the Code after obtaining special leave. Therefore, the complainant in a complaint case for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 cannot be termed or defined as a 'victim' under Section 2 (wa) of the Code, as amended by Act No.5 of 2009. As such, since the complainant does not come within the ambit of a 'victim' under Section 2 (wa) of the Code, his remedy is to prefer an appeal under Section 378 (4) of the Code with special leave. To sum up, a complainant in a complaint case relating to an offence under Section 138 of the Negotiable Instruments Act, 1881 would be required to file an appeal against acquittal in such case only under Section 378 (4) of the Code, after obtaining special leave.

8 In **Subhash Chand V. State (Delhi Administration)**², the Hon'ble apex Court while dealing with the validity of an order passed by the High Court of Delhi holding to the effect that an appeal filed by the State against the order of acquittal

² (2013) 2 SCC 17

therein would lie to the Sessions Court under Section 378 (1) of the Code and not to the High Court under Section 378 (4) thereof, held that the complainant can file an application for special leave to appeal against an order of acquittal of any kind only to the High Court under Section 378 (4) of the Code and he cannot file such an appeal in the Sessions Court under Section 378 (1) (a) of the Code.

9 Having regard to the facts and circumstances of the case, and also in view of the principle enunciated in **P.Vijaya Laxmi case (1 supra)** and also in view of the settled proposition of law, since the petitioner filed the appeal before the Sessions Court on a wrong advice, I deem it appropriate to direct the lower appellate Court to return the appeal along with the miscellaneous petition for condonation of delay filed by the petitioner to the petitioner for presentation before the appropriate Court.

10 This Criminal Revision Case is accordingly disposed of. Miscellaneous petitions if any pending in this revision case shall stand closed.

//TRUE COPY//

SD/-K.SRINIVASA RAO
JOINT REGISTRAR
SECTION OFFICER

To,

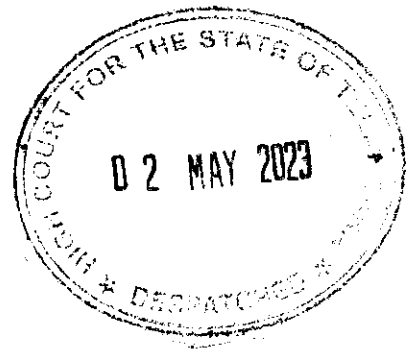
1. The Metropolitan Sessions Judge, Hyderabad .
2. Two CCs to Public Prosecutor, High Court for the State of Telangana, at Hyderabad.(OUT)
3. One CC to SRI. J PRABHAKAR Advocate [OPUC]
4. Two CD Copies
5. One Spare Copy

HIGH COURT

DATED:29/07/2022

ORDER

CRLRC.No.1891 of 2014



DISPOSING OF THE CRL.R.C.

⑦ VLS
12/9/22