THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1694 OF 2007

ORDER:

This is a Criminal Revision Case under Sections 397(1) and 401 of the Code of Criminal Procedure, 1973 (2 of 1974) (for short, 'the CrPC') by the petitioner/sole accused assailing the judgment dated 09.10.2006 of the learned IX Additional District & Sessions Judge (Judge, Fast Track Court), Guntur passed in Criminal Appeal No.263/2005.

1. **(b)** By the judgment dated 27.06.2005 passed in C.C.No.524/2004 (Old C.C.No.319/2004 on the file of VI Additional Judicial Magistrate of First Class Court, Guntur), the learned Special Judicial Magistrate of First Class for Excise, Guntur found the petitioner/accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act (for short, 'the Act') and convicted him under Section 255(2) of CrPC and sentenced him to undergo rigorous imprisonment for a period of six months and pay a fine of Rs.3,000/- and suffer simple imprisonment for a period of two months in default of payment of the said fine amount. While partly allowing the above mentioned First Appeal, the learned Additional Sessions Judge while confirming the conviction of the accused for the aforementioned offence had modified the substantive sentence of imprisonment by setting aside the said sentence and sentenced the accused to pay a fine of Rs.1000/- and suffer simple imprisonment for seven days in default of payment of the said fine amount and also pay a compensation of Rs.35,000/- to the complainant.

2. I have heard the submissions of the learned counsel for the petitioner/accused, the learned counsel for the first respondent/complainant and the learned Public Prosecutor representing the second respondent-State. I have carefully perused the material record.

3. Now the points for determination are –

> 1. **Whether the complainant could bring home the guilt of the petitioner/accused, beyond reasonable doubt, for the offence with which the accused was charged and found guilty?**
> 2. **Whether the petitioner/accused has made out valid and sufficient grounds for his acquittal? And, if so, whether the judgment of the Court below is liable to be aside?**

4. **<u>POINTS</u>:**

4. **(a)** The case of the complainant, in brief, is this: "The accused had borrowed an amount of Rs.74,000/- from the complainant on 06.03.2004 to meet his family and business expenses and had executed a demand promissory note on the said date in favour of the complainant agreeing to repay the same with interest @ 24% per annum either to the complainant or his order on demand. On demands made by the complainant to repay the said debt, the accused had issued a cheque dated 23.07.2004 drawn on Global Trust Bank, Guntur for Rs.70,000/- towards part payment of the above said legally enforceable debt and made a request to the complainant to present the said cheque for collection on 26.07.2004. However, since the banker of the accused i.e., Global Trust Bank fell in financial crisis with effect from 24.07.2004, the complainant could not present the above cheque for collection on 26.07.2004. The accused had taken undue advantage of the situation. Therefore, the complainant had got issued a registered legal notice dated 02.08.2004 to the accused narrating all the facts and demanded him to repay the debt with accrued interest. The accused having received the said notice had issued a reply notice dated 13.08.2004 with false allegations. After the exchange of notices, the accused had approached the complainant along with a common friend by name A. Lakshmi Narayana and had pleaded that his reply notice, with the false allegations, was issued under pressure and at the instance of his father and had further stated that the Global Trust Bank was merged with Oriental Bank of Commerce and that therefore, the cheque may be presented for collection on any day after 15.08.2004. Having believed the words of the accused, the complainant had presented the above cheque for collection through his banker i.e., Andhra Bank, Old Guntur on 17.08.2004. However, the same was returned with a return memo dated 18.08.2004 showing the reason for return as "Account Closed". Therefore, the complainant had got issued a registered legal notice dated 20.08.2004 stating the above facts and demanding the amount covered by the cheque. The complainant sent that notice to the accused both by registered post with acknowledgement due and also under Certificate of Posting. The said notice sent by RPAD was returned with an endorsement "*Refused*". The accused having received the notice sent under 'Certificate of Posting' did not issue any reply. Hence, the complaint is filed to punish the accused for the offence punishable under Section 138 of the Act."

4. **(b)** During the course of trial before the learned Magistrate, the complainant and his supporting witnesses were examined as PWs 1 to 4 and exhibits P1 to P10 were marked. One S. Srinivasa Rao was examined as DW1 on the side of the accused and exhibit D1 was marked. In the cross examination of the said defence witness, exhibits P11 to P13 were marked. As already noted, on merits the Courts below found the accused guilty of the offence punishable under Section 138 of the Act.

4. (c) The learned counsel for the petitioner/appellant contended as follows: 'The complaint was presented beyond period of limitation; the said aspect was not noticed and considered by the Courts below. On the ground of limitation the case is liable to be dismissed. In the cross examination, the complainant had admitted that the contents of the cheque are in different ink and that the ink of the contents is different from the ink of the signature on the cheque. Exhibit D1 clearly shows that there are transactions only between the son of the complainant and the accused and that there is no legally enforceable debt as between the complainant and the accused. The copy of the notice filed by the complainant into the Court is different from the one issued to the accused. The ingredients of the penal provisions of law are not attracted to the case on hand. Exhibit P10-promissory note is materially altered and is therefore, not enforceable and hence, there is no legally enforceable debt. PW1 had earlier issued a notice under the original of exhibit P2 before presenting the cheque. Therefore, the accused is entitled to a clean acquittal.'

4. (d) On the other hand, the learned counsel for the complainant had submitted as follows: 'The complainant by examining himself and also his supporting witnesses and by marking exhibits P1 to P13 had proved the case as required under law. The Courts below having properly appreciated the facts and the evidence had recorded the concurrent findings of fact and had found the accused guilty of the offence. The Court below had recorded well reasoned findings after proper appreciation of the facts, the evidence and the law. Therefore, there is no merit in any of the contentions of the accused and that the revision is devoid of merit and is liable to be dismissed.'

4. **(e)** I have carefully perused the oral and documentary evidence. PW1 in his examination-in-chief had reiterated his pleaded case and had exhibited the dishonoured cheque-exhibit P1, office copy of legal notice-exhibit P2, reply notice-exhibit P4, the cheque return memo-exhibit P5, the office copy of legal notice-exhibit P6, the under Certificate of Posting slip-exhibit P7, the returned postal cover-exhibit P8, the reply notice-exhibit P9, the promissory note-exhibit P10, the office copy of legal notice-exhibit P11, the postal acknowledgment-exhibit P12 and the postal receipt-exhibit P13. He had also examined PW2, the Branch Manager of Andhra Bank, Old Guntur to prove the presentation of cheque-exhibit P1 for collection on 17.08.2004 and the dishonour and return of the same with exhibit P5-memo of the said bank showing the reason for dishonour of the cheque as "Account closed". PW3 was also examined to show that the accused is having an account in Global Trust Bank and that on 14.08.2004 the said Bank was amalgamated in Oriental Bank of Commerce, Guntur and that the SB accounts of the customers are being maintained with same numbers after such amalgamation and that the exhibit P1-cheque was received for collection on 18.08.2004 and was returned with a memo stating the reason for return as "Account closed". PW4, A. Laxminarayana, was also examined to prove the case of PW1 that after exchange of the first set of notices, the accused had approached him through PW4 and requested him to represent the cheque. In this regard, PW4 deposed about the borrowal of amount by the accused from PW1 and the execution of exhibit P10-promissory note by the accused. He had also deposed about the accused requesting him to accompany him to go to the house of the complainant to make a request to represent the exhibit P1-cheque after 15.08.2004 and their visit to the house of the complainant and the accused making a request to PW1 to represent exhibit P1-cheque after 15.08.2004. As against this evidence, the accused had examined one S. Srinivasa Rao as DW1. He is a Home Guard attached to the Office of the Superintendent of Police, Guntur. Exhibit D1-acknowledgment was exhibited in his evidence. He had testified that he has no money transactions with the accused and that the acknowledgment exhibit D1 shown to him is given to the accused on 02.04.2004 and that it is in his own handwriting and that in exhibit D1, it was mentioned that he received Rs.5,000/- towards pronote of Rs.15,000/- and that he had paid Rs.5,000/- from out of Rs.30,000/- and that therefore, the remaining amount due and payable was Rs.25,000/- and that he is not doing money lending business. In his cross-examination, he had admitted that the transaction under exhibit D1 relates to his maternal uncle, Sangavarapu Someswara Rao, who is resident of Guntur and that his maternal uncle on receipt of a word from the accused that he would pay the amount asked him (DW1) to go to the accused and collect the money and that accordingly, he had collected Rs.5,000/- from the accused and gave exhibit D1 acknowledgment at the request of the accused and that his said uncle had also got issued a legal notice dated 04.08.2004 to the accused calling upon him to pay the balance amount under the two promissory notes for Rs.15,000/- each and that the accused had received the said notice under exhibit P12, the postal acknowledgment and that the office copy of the notice is exhibit P11. He had further testified that the accused had paid the entire amount due to his maternal uncle after the said notice. In the re-examination, he had stated that he does not know whether the accused gave reply to exhibit P11 and that it is not mentioned in exhibit D1 that he received Rs.5,000/- towards the payment made to his maternal uncle. After the said re-examination, the learned counsel for the accused sought permission to put questions in the nature of cross-examination and cross-examined DW1. Thus, DW1 did not support the case of the accused is not in dispute. The evidence of DW1 only shows that exhibit D1 under which Rs.5,000/- was received by DW1 relates to a transaction between the accused and the maternal uncle of DW1 and that DW1 received Rs.5,000/- under exhibit D1 from the accused on behalf of his maternal uncle.

4. **(f)** A plain reading of the entire evidence on record is sufficient to come to a safe conclusion that the burden of proof, which is on the complainant, stood discharged and that the onus shifted to the accused in view of the provision of Section 139 of the Negotiable Instruments Act. The contention of the accused from the defence appears to be that the complainant/PW1 is a stranger to him and that he did not issue exhibit P1 cheque and did not execute exhibit P10 promissory note in favour of the complainant and that he had only borrowed the said amount from S.Srinivasa Rao, who is the son of PW1 and that two blank promissory notes and blank cheque which were given to the said Srinivasa Rao were pressed into service and the name of the complainant was filled up and a false case was filed against him. Thus, the accused who had admitted his signatures on the promissory note and the cheque in question, which is dishonoured, did not enter into witness box and had failed to give evidence to substantiate his defence. The DW1 did not support his defence.

4. (g) Coming to the aspect of limitation, exhibit P1 cheque, on a perusal would show that it bears the date stamp of 'Andhra Bank' with date 17.8.2004. Though a contention was sought to be advanced that the complaint was barred by limitation, no material facts to substantiate the said defence could be pointed out by the accused. Both the courts below having referred the established facts had held that the complaint is filed within time and is not barred under law. In exhibit P4 notice, the accused did not take any pleas which were advanced by him in the defence in this calendar case before the trial Court. In exhibit P4 notice, a plea of forgery was taken, but, in the defence a plea is taken to the effect that the cheque and promissory note were given to the son of PW1 and the same were pressed into service and that a false case was foisted. Therefore, there is no consistency in the defence. Therefore, in the absence of any credible and legal evidence on the side of the accused, and on account of the failure on the part of the accused to adduce any evidence to rebut the presumptions under Sections 118 and 139 of the NI Act, this Court finds that the complainant had established the case as required under law and beyond reasonable doubt and that the various defences advanced by the accused are untenable and cannot be countenanced.

4. (h) Viewed thus, this Court finds that there is no illegality or irregularity or impropriety in the order of the court below calling for interference. On the other hand, a perusal of the judgments of the courts below would show that the courts below had recorded sustainable reasons in support of the findings in the well-considered judgments. Therefore, it follows that this revision is devoid of merit and is liable to be dismissed. The points are accordingly answered against the accused.

5. Coming to the measure of sentence, it is to be noted that the sentence of rigorous imprisonment for six months imposed by the trial court was converted by the court below into additional fine of Rs.1,000/- coupled with in default sentence of simple imprisonment for seven days; the Court below further directed the accused to pay Rs.35,000/-, i.e., half of the cheque amount to the complainant as compensation. The learned counsel for the accused had contended that without imposing a sentence of imprisonment a direction to pay any compensation cannot be given and that therefore, the order of sentence passed by the court below is not in accordance with law. He had alternately contended that a lenient view may be taken and that without restoring the sentence of rigorous imprisonment imposed by the trial court an imprisonment till the raising of the court may be imposed, if necessary, as the same would be sufficient to justify the award of compensation. It is also submitted that the accused is an young man below 30 years by the date of the alleged offence and that he has a bright future. Considering the explanatory statement offered by the learned counsel, the sentence imposed by the trial court, i.e., conversion of sentence of imprisonment into award of fine is modified and the accused is sentenced to imprisonment till the raising of the court while maintaining compensation of Rs.35,000/- awarded, which is half of the cheque amount. However, on failure of the accused to pay the compensation, he shall undergo simple imprisonment for two weeks. The compensation amount, if not already paid, shall be paid by the accused within three weeks from the date of receipt of a copy of this order and on such payment of compensation the same in turn shall be paid to the complainant.

6. In the result, the Criminal Revision Case is dismissed with the modification of the sentence as indicated above. The accused is said to be at large. The trial court shall secure the presence of the accused and make him serve the modified sentence imposed by this Court.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.SEETHARAMA MURTI, J

12th February 2015
MVA