

HON'BLE SMT JUSTICE ANIS
CRIMINAL REVISION CASE No.664 OF 2007

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the petitioner herein challenging the judgment dated 04.05.2007, passed by the IV Additional District and Sessions Judge, Visakhapatnam, in Criminal Appeal No.46 of 2005, whereunder and whereby the conviction and sentence passed against the petitioner herein for the offence punishable under Section 138 of the Negotiable Instruments Act (for short, 'N.I.Act') vide the judgment dated 04.07.2005 in C.C.No.305 of 2001 of the III Additional Chief Metropolitan Magistrate, Visakhapatnam, was confirmed.

2. The petitioner herein is the accused, whereas respondent is the complainant in C.C.No.305 of 2001 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C. before the trial Court.

3. The brief facts of the case are that the accused borrowed a sum of Rs.80,000/- on 10.08.2000 from the complainant and agreed to repay the same with interest at 36% per annum by executing a pronote. In spite of repeated demands made by the complainant, the accused failed to pay the same, but issued cheque for Rs.50,000/- in the month of November, 2000. When the complainant deposited the said cheque in Canara Bank for collection, the same was returned as 'insufficient funds'. Therefore, the complainant issued legal notice on 20.12.2000. The said notice was returned unserved as not claimed. Therefore, the complainant filed a complaint under Section 138 of the N.I.Act.

4. The learned Magistrate, took cognizance of the case and examined the accused under Section 251 Cr.P.C, the petitioner pleaded not guilty

and claimed to be tried. During the course of trial, on behalf of the prosecution, PWs.1 and 2 were examined and got marked Exs.P1 to P6.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C. The Accused denied the evidence adduced against him and that he himself examined as DW1. After hearing arguments and after perusing the evidence available on record, the learned Magistrate convicted the accused and sentenced him to undergo Rigorous Imprisonment for a period of one year and to pay compensation of Rs.70,000/-.

6. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.46 of 2005 before the Sessions Judge, Visakhapatnam, where the Appellate Court, after considering the oral and documentary evidence, after hearing both sides and after perusing the findings of the trial Court, held that the complainant established that the cheque issued by the accused for Rs.50,000/- towards discharge of legally enforceable debt was dishonoured without sufficient funds, thereby committed the offence punishable under Section 138 of the N.I. Act and that the accused failed to discharge his burden by rebutting the presumption under Section 139 of the N.I.Act. It is also held that the Court notice addressed to the accused, where he was residing at the relevant time, was returned unclaimed and that as per Section 27 of the General Clauses Act, there is a valid service of notice on the accused and that the complainant proved the guilt of the accused beyond reasonable doubt for the offence punishable under Section 138 of the N.I.Act. and confirmed the judgment of the trial Court by dismissing the appeal.

7. Being aggrieved by the concurrent finding of both the Courts below, passed in Criminal Appeal No.46 of 2005 and C.C.No.305 of 2001, the accused preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/ accused mainly argued that no notice was served on him and endorsement on the postal returned cover was obtained by using influence and that the accused given blank cheque and blank promissory note for the purpose of chit transaction, and that the same were misused by the complainant. Learned counsel also submitted that the Court may take lenient view and reduce the sentence of imprisonment.

9. On the other hand, learned counsel for the respondent/complainant submitted that there is a valid service under Section 27 of the General Clauses Act as the letter was addressed to the correct address of the accused, admittedly, where he was residing and that the said cheque was issued for discharging of the loan and that the complainant proved Ex.P.2- cheque dated 07.12.2000 issued towards discharge of legally enforceable debt without sufficient funds. Thus, the accused committed offence under Section 138 of the N.I. Act and prayed to dismiss the revision.

10. Now, the point that arises for consideration is:

Whether the revision petitioner is entitled to set aside the concurrent judgments passed by the Courts below for the offence punishable under Section 138 of N.I.Act, as prayed for or not?

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POINT:

11. A perusal of the record shows that there is no dispute about the signature on the promissory note and the cheque issued by the accused. Since the complainant is the holder of the cheque in due course, a presumption would arise in his favour under Section 139 of the N.I. Act and it is for the accused to rebut the same. A perusal of the evidence of PW.1 shows that he was running a chit fund business under the name and style of M.R.S.Chits and Finance, but he denied the suggestion that the accused

was the member of the chit for the year 1999 and that the said cheque was given for the purpose of chit transaction. PW.1 clearly stated in his evidence that the accused borrowed a sum of Rs.80,000/- and executed Ex.P.1-promissory note which was supported by PW.2.

12. The appellate Court as well as the trial Court categorically stated that notice was sent to the accused on correct address, and the same was returned unclaimed. Therefore, as per Section 27 of the General Clauses Act it is sufficient service. The revision petitioner has not produced any evidence to disprove that the complainant got the said cover returned unclaimed by using influence of the postal authorities. Both the Courts below categorically stated that notice was sent to the correct address of the accused. Therefore, if the said cover was unclaimed by the accused, it amounts to due service on him and it is not his case that he is not available in the address at the time of sending the notice to him by the complainant. In view of the evidence on record, the complainant proved that there is a legally enforceable debt and the accused issued the said cheque for Rs.50,000/- towards discharge of the said debt and Ex.P.1 was returned with an endorsement 'insufficient funds', thereby, the accused committed the offence punishable under Section 138 of N.I. Act. Therefore, I am of the view that both the Courts below rightly convicted the accused and gave concurrent findings, which need no interference by this Court.

13. The other contention of the learned counsel for the revision petitioner/accused is that in case, this Court comes to a conclusion that accused has committed the offence, the quantum of sentence may be reduced as he is the sole breadwinner having parents, wife and children. Taking into consideration of the facts and circumstances of the case, I am of the view that a lenient view shall be taken in favour of the accused by reducing the sentence of imprisonment to six months from one year. Therefore, I am inclined to dispose of the revision as under.

14. The conviction recorded against the revision petitioner/accused by the III Additional Chief Metropolitan Magistrate, Visakhapatnam, in C.C.No.305 of 2001 for the offence punishable under Section 138 of the N.I. Act as confirmed by Sessions Judge, Visakhapatnam, in CrI.A.No.46 of 2005 is hereby confirmed. But, the sentence of imprisonment of one year imposed by both the Courts below is hereby modified and reduced to six months. So far as compensation is concerned, it is unaltered. The period of imprisonment already suffered by the revision petitioner/ accused is directed to be given set off. The accused is directed to pay compensation to the complainant within four months from the date of receipt of a copy of this order.

15. Accordingly, the Criminal Revision Case is disposed of.

16. The miscellaneous petitions, if any, filed in this revision case shall stand closed.

Date: 19.03.2015
Kvrm

ANIS, J

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