HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.2112 of 2012

ORDER:-

The criminal revision case is filed against the Judgment dated 29-10-2012 in Criminal Appeal No.327 of 2011 on the file of the Principal Sessions Judge, West Godavari District at Eluru. The petitioner/accused was tried for an offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') by the learned Judicial Magistrate of First Class, Special Mobile Court, West Godavari, Eluru, in C.C.No.124 of 2009 and by Judgment, dated 03-11-2011, the learned Magistrate found the petitioner/accused guilty of the offence punishable under Section 138 of the Act and convicted and sentenced her to undergo for a period of six months and shall also pay a fine of Rs.3,000/-. The petitioner/accused preferred the appeal and the learned appellate Court confirmed the findings of the trial Magistrate and dismissed the appeal. Hence, the revision.

2. The respondent/*de facto* complainant filed the complaint alleging that the petitioner/accused borrowed an amount of Rs.1,50,000/- from the complaint on 09-09-2006 for her family expenses and executed demand promissory note Ex.P.1 with the promise to repay the same with interest @ Rs.2/- per hundred per month, that inspite of demands, the accused did not pay the amount, that the complainant got issued Ex.P.2 legal notice on 17-06-2008 demanding repayment of the amount covered by Ex.P.1 – promissory note, that thereafter, the petitioner/accused issued cheque Ex.P.3 on 03-12-2008 for an amount of Rs.1,50,000/- towards part satisfaction of the amount covered under promissory note – Ex.P.1, that when the cheque was presented for collection, the same returned dishonoured with an endorsement that funds insufficient, that receiving the intimation from the bank, the respondent/complainant got issued a legal notice-Ex.P.6 on 10-01-2009, that the petitioner/accused received the same as per acknowledgment – Ex.P.7. but failed to pay the amount or even give reply to the notice. Hence, the complaint.

3. During the course of trial, the complainant examined himself as

PW.1 and produced Exs.P.1 to P.7. The petitioner/accused denied the evidence on record. No defence is produced.

4. Learned Counsel appearing for the petitioner/accused submits that the conviction and sentence of the petitioner/accused in both the Courts below is erroneous, that by the date the first legal notice – Ex.P.2 was issued, there was no promissory note in existence, and therefore, the consequential issuance of cheque and legal notice are not correct, that only after issuing the legal notice, the promissory note was fabricated, both the Courts below failed to appreciate this aspect in proper perspective and convicted the petitioner/accused erroneously.

5. Learned Counsel appearing for the respondent/complainant submits that admittedly the petitioner/accused has executed the promissory note-Ex.P.1 and she has received the legal notice, the office copy of which is Ex.P.2, thereafter, the petitioner/accused approached the respondent and in part payment of the amount, issued the cheque Ex.P.3 on 03-12-2008, the same was dishonoured, the respondent issued legal notice, the office copy of which is Ex.P.6, and the petitioner/accused received the same under Ex.P.7. Admittedly, no payment is made nor any reply is issued. It is further contended that the respondent/complainant did not even examine herself or produce any evidence to show that she is not liable to pay the amount, both the Courts below have properly appreciated the material on record and the same do not warrant any interference. It is further submitted that the petitioner/accused is a Government servant working as a Senior Assistant in the Office of the Executive Engineer, Irrigation Circle, and it is difficult to believe that she would have issued the cheque Ex.P.3 without there being any legally enforceable debt. Her silence inspite of notice and during the course of trial shows that she has no defence and her contention that the cheque Ex.P.3 was not issued for enforcing any legally enforceable debt is incorrect. Hence, the revision is liable to be dismissed.

6. The admitted case is that the petitioner/accused is working as a Senior Assistant in the Irrigation Department. The case of the respondent/complainant, who is examined as PW.1, is that originally a

sum of Rs.1,50,000/- was borrowed by the petitioner on 09-09-2006 and inspite of the demands, the amounts were not paid. Therefore, the legal notice Ex.P.2 was issued. Thereafter, the petitioner/accused approached the respondent/complainant and accepting her liability, and as the part payment, issued a cheque Ex.P.3 for Rs.1,50,000/- on 03-12-2008. The cheque was dishonoured, legal notice was issued and complaint is filed. PW.1 was elaborately cross-examined. The defence of the petitioner/accused which could be gathered from the cross-examination of PW.1 is that one Nathaniyal is the son of PW.1 and he is running Sowmya Chit Funds at Eluru. The accused was one of the subscribers. It is also elicited in the cross-examination of PW.1 that after issuance of Ex.P.2, the legal notice, on 17-06-2008, the contents of promissory note-Ex.P.1 were filled up. It is also elicited from the cross-examination that the accused signed the cheque Ex.P.3 in his presence. It is suggested to PW.1 that a false case is fabricated against the accused by using the blank documents that were obtained from the accused towards security in a chit transaction. What is apparent from the above is that the petitioner/accused do not deny having executed the promissory note Ex.P.1 and issuance of cheque Ex.P.3. On the basis of the suggestion made to PW.1, it cannot be said that there was no legally enforceable debt as on the date when the cheque Ex.P.3 was issued on 03-12-2008. Much emphasis is laid by the petitioner/accused on the admission of PW.1 that the contents of the promissory note Ex.P.1 were filled up after issuance of the legal notice. That do not, in any way, affect the case of the complainant for the reason that what is all that is required to be seen is on the date when the cheque in question was issued, there should be a legally enforceable debt. When the promissory note is of September, 2006, the cheque is issued on 03-12-2008. By the date the cheque was issued, even according to the accused, there was no defect in the promissory note Ex.P.1. The contention of the petitioner/accused is that she signed blank cheque and promissory note by way of a surety, in a chit transaction in between the son of the respondent/complainant and herself. Excepting for giving the suggestion, no iota of evidence is produced by the petitioner/accused to show that she was a subscriber to any chit being run by the son of the complainant or that she singed blank documents by way of surety.

7. There is no dispute with regard to the legal proposition that once issuance of a cheque in question is accepted, it is for the petitioner/accused to show that the same was issued without there being the existence of any legally enforceable debt. If the petitioner/accused can discharge the said presumption by raising a probable defence, the onus shifts on the complainant to prove that the cheque in question was issued in discharge of the legally enforceable debt. Learned Counsel appearing for the petitioner/accused relies upon **M.S.NARAYANA MENOR @ MANI v. STATE OF KERALA AND ANOTHER**[1] and **KRISHNA JANARDHAN BHAT v. DATTATRAYA G.HEGDE**[2]**.** In the decision **Narayana Menon** (1 supra), the legal proposition is laid down with which there is no dispute. In the decision **Krishna Janardhan Bhat** (2 supra) the Supreme Court held at paras 34 and 35 as under:-

> "Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities". Inference of preponderance of probabilities can be drawn not only from the material brought on record by the parties but also by reference to the circumstances upon which he relies.
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> A statutory presumption has an evidentiary value. The question as to whether the presumption whether stood rebutted or not, must, therefore, be determined keeping in view the other evidence on record. For the said purpose, stepping into the witness box by the appellant is not imperative. In a case of this nature, where the chances of false implication cannot be ruled out, the background fact and the conduct of the parties together with their legal requirements are required to be taken into consideration".

As already stated, in the instant case, the petitioner/accused who is working as Senior Assistant in a Government Department, claims to have signed a blank promissory note on 09-09-2006. Thereafter she was served with a legal notice on 17-06-2008. She did not respond to it but instead she claims to have issued a blank cheque on 03-12-2008. It is difficult to believe that she would have issued the cheque in question in December, 2008, if really she was not liable to pay the amount. In order to successfully rebut the legally permissible presumption, the petitioner/accused should establish the fact that she has signed on the blank documents such as promissory note and cheque in question without there being any liability. She having failed to do so, the irresistible inference that the can be drawn is that the petitioner/accused has issued the cheque in question in discharge of legally enforceable debt. Both the Courts below have appreciated the above aspects in proper perspective and held that the petitioner/accused is guilty of having issued the cheque on 03-12-2008 which was dishonoured by the bank on 13-12-2008 on the ground of insufficiency of funds. In that view of the matter, the findings of both the Courts below do not warrant any interference and the same is liable to be confirmed.

8. The Courts below have sentenced the petitioner/accused to undergo rigorous imprisonment for a period of six months and imposed a fine of Rs.3,000/-. Admittedly, the petitioner/accused is working as a Senior Public Servant in a Government Department. Taking into consideration the totality of the facts and circumstances, I feel that the ends of justice will be met if the sentence of imprisonment is set aside by imposing additional fine. As per Section 138 of the Act, the petitioner/accused is liable to imprisonment up to two years, or with fine which may extend to twice the amount of cheque or with both. Both the Courts below have imposed a fine of Rs.3,000/- in addition to the sentence of imprisonment. The said fine amount has been paid. Therefore, the petitioner/accused can be directed to pay additional fine of Rs.2,00,000/- (Rupees Two lacs only) which shall be paid to the

complainant, in default the petitioner/accused shall suffer rigorous imprisonment for a period of six months.

9. In the result, the revision is dismissed confirming the conviction of the petitioner/accused for the offence punishable under Section 138 of the N.I.Act. However, the sentence of six months imprisonment is set aside instead the petitioner/accused is sentenced to pay a fine of Rs.2,00,000/- (Rupees two lacs only) within a period of two months from today, in default to undergo rigorous imprisonment for a period of six months. As and when the fine amount now imposed is deposited, the same shall be paid to the respondent/complainant.

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

M.S.K.Jaiswal, J

8th September, 2015
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[1] (2006) 6 SCC 39
[2] (2008) 4 SCC 54