

THE HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.181 of 2008

-

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 revision petitioner herein challenging the judgment dated 24-01-2008, passed by the V Additional Sessions Judge, Fast Track Court, Guntur District, in Criminal Appeal No.463 of 2004, whereunder and whereby the conviction passed against the revision petitioner herein for the offence punishable under Section 138 of the Negotiable Instruments Act, vide the judgment dated 12-10-2004 in C.C.No.257 of 1999 by the VII Addl. Munsiff Magistrate, Guntur, was confirmed.

2. The revision petitioner herein is the accused, whereas respondent is the complainant in C.C.No.257 of 1999 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 case of prosecution in brief is that the defacto complainant is doing cotton business and accused purchased lease lint cotton from him and Rs.32,08,053/- was due under that khata and on demand accused paid Rs.12,54,732/- and also paid Rs.4,49,535/- and failed to pay the remaining balance amount and issued two cheques for Rs.2,50,000/- and Rs.4,54,221/- and when those cheques were presented by the defacto complainant in the bank for collection same were dishonoured due to "INSUFFICIENCY OF FUNDS". Thereafter the complainant got issued a legal notice, dated 27-04-1998 to repay the cheque amounts within 15 days but the accused did not choose to repay the cheque amounts. Hence, the complaint.

4. The private complaint filed by the complainant was taken on file by the learned VII Addl. Munsiff Magistrate, Guntur, vide C.C.No.257 of 1999 against the accused. During trial, on behalf of prosecution, PWs.1 to 4 were examined and Exs.P1 to P18 were got marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C, putting the incriminatory material deposited against him. The Accused denied the same and got examined DW1 and got marked Exs.D1 to D36 on his behalf. After hearing the arguments and after perusing the record, the learned VII Addl. Munsiff Magistrate, Guntur on 12-10-2004, gave judgment and convicted the accused and sentenced him to undergo Rigorous Imprisonment for a period of six months and to pay a fine of Rs.5,000/-, and in default to undergo Simple Imprisonment for a period of one month for the offence punishable under Section 138 of the Negotiable Instruments Act.

6. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.463 of 2004 before the V Additional Sessions Judge, Fast Track Court, Guntur, where the appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the findings of the trial Court, dismissed Crl.A.No.463 of 2004 by confirming the conviction passed by the trial Court for the offence punishable under Section 138 of the Negotiable Instruments Act.

7. Being aggrieved by the judgment of the appellate Court in Crl.A.No.463 of 2004, accused preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/accused argued that there is no service of statutory notice on the accused. Therefore, benefit of doubt should be given to him. Further the trial Court failed to appreciate the evidence of witnesses to prove that the petitioner paid the amount covered under Exs.P1 and P2 by way of bank order, therefore, there is no legally enforceable debt by the petitioner and prayed the Court to allow the revision.

9. On the other hand, learned counsel for the respondent/ complainant argued that the defacto complainant is doing cotton business in the name and style of Lakshmi Srinivasa Traders and he knows A1 and A2 and A1 is sole proprietor of Zubin Traders is also doing cotton business, purchasing cotton from the complainant on credit basis by opening khata. As per the said Khata the petitioner has to pay the balance amount of Rs.15,04,668/-. In spite of repeated demands, the accused issued Ex.P1 cheque which was drawn on State Bank of India and Ex.P2 cheque drawn on U.C.O. Bank, Guntur. It is also argued that when the defacto complainant presented both the cheques, they were returned with an endorsement "INSUFFICIENT FUNDS". After careful consideration, both the Courts below found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act and prayed the Court to dismiss the revision.

10. Now, the point for determination is --

Whether the revision petitioner herein is entitled to set aside the concurrent findings given by the trial Court as well as the appellate Court for the offence punishable under Section 138 of N.I. Act?

11. **P O I N T:** A perusal of the record shows that PW.1, is the *de facto* complainant stated that he is doing cotton business in the in the name and style of Lakshmi Srinivasa Traders and he knows A1 and A2 and A1 is sole proprietor of Zubin Traders is also doing cotton business by purchasing cotton from the complainant on credit basis by opening khata. As per the said Khata the petitioner has to pay the balance amount of Rs.15,04,668/-. PW1 also stated that A1 issued Exs.P1 and P2 cheques on 22-10-1997 and 08-10-1997 and when he presented the said cheques they were dishonoured with an endorsement "INSUFFICIENT FUNDS". PW1 also stated that he got issued legal notice, dated 27-04-1998 and the accused received the said notice under Ex.P6 and got issued reply notice under Ex.P7. In the cross-examination of PW1 nothing has been elicited to disprove the evidence.

12. PWs.2 and 3 are the Bank Officers, who categorically stated that the said cheques were returned as there is no sufficient funds in the account of A1.

13. To prove the case the accused himself examined as DW1. DW1 admitted about issuing of Exs.P1 and P2 cheques in favour of PW1 - defacto complainant but he denied receiving cotton from the defacto complainant.

14. A perusal of the evidence on record shows that PW1 proved that there is a legally enforceable debt against the petitioner/accused, and petitioner/accused failed to rebut the said presumption.

15. The trial Court as well as the appellate Court after considering the evidence on record rightly held that there is a legally enforceable debt by the petitioner under the Khata of the first respondent. Therefore, the re-appreciation of evidence by this Court does not arise and the petitioner has not made out any case to interfere with the concurrent findings of both the Courts below through the revision petition.

16. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 24-01-2008, passed by the
V Additional Sessions Judge, Fast Track Court, Guntur, in Criminal Appeal No.463 of 2004.

17. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

April 06, 2015

PN

THE HON'BLE SMT JUSTICE ANIS

— — — — —

-
-
-
-
-
-

CRIMINAL REVISION CASE No.181 of 2008

April 06, 2015

PN