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

Criminal Revision Case No.1588 of 2007

Date: June 2015

Between :-

Velagapudi Lakshmi Rajyam .. Petitioner

And

The State of A.P.,

Rep.by its Public Prosecutor

High Court, Hyderabad

And another

.. Respondents

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

Criminal Revision Case No.1588 of 2007

ORDER:-

1. The revision petition is filed by the respondent/accused in C.C.No.93 of 2005 on the file of the II-Additional Munsif Magistrate, Tenali. The said case arose out of a complaint filed by the 2nd respondent/complainant under Sections 138 and 142 of the Negotiable Instruments Act (for short 'the Act') contending that the petitioner/accused has taken a hand-loan of Rs.15,000/- from the complainant on 10-10-2004 in the presence of one Alapati Bose promising to repay the same within one month, that the petitioner/accused issued a cheque bearing No.967748, drawn on Oriental Bank of Commerce by putting the date as 06-12-2004, that the said cheque was presented for collection in Central Bank of India, Thumuluru Branch, which same was dishonoured with an endorsement *payment stopped by the drawer*, that the respondent/complainant issued a registered notice on 31-12-2004 requesting the accused to pay the amount which she received and gave a reply with false allegations and hence the complaint.

2. Cognizance of the complaint was taken and during the course of trial, the complainant examined himself as PW.1 and also examined PW.2 and produced

Exs.P.1 to P.6. the petitioner/accused was examined under Section 313 Cr.P.C. where she denied the evidence on record. On her behalf, DW.1-Bank Manager has been examined who produced Exs.X.1 and X.2. The petitioner/accused examined herself as DW.2.

3. Upon consideration of the oral and documentary evidence on record, the learned Magistrate by Judgment dated 07-06-2006 found the petitioner/accused guilty of the offences and convicted and sentenced her to undergo simple imprisonment for three months and to pay a fine of Rs.500/-, in default simple imprisonment for one month.

4. Aggrieved by the said conviction and sentence, the petitioner/accused preferred Criminal Appeal No.292 of 2006 on the file of the XI-Additional Sessions Judge (FTC), Guntur at Tenali and by Judgment dated 16-11-2007, the appellate Court did not find any merits in the appeal and dismissed the same by confirming the conviction and sentence of the learned Magistrate.

5. The petitioner/accused preferred the present revision contending that both the Courts below have failed to appreciate the material on record in proper perspective, that the petitioner/accused herself instructed the bank to stop the payment, that the Courts below have erroneously disbelieved the defence of the petitioner/accused, that having found that there were some transactions in between the parties, the Courts below ought to have believed the defence, but erroneously jumped to the conclusion that the cheque was issued for discharge of the debt. Hence the revision.

6. The learned Counsel appearing for the petitioner/accused submits that in between the son of the petitioner/accused and the complainant, there were some dealing in the matter of two wheelers and in that connection, the complainant was to execute the promissory note in favour of the petitioner/accused and thereafter present the cheque which the petitioner/accused gave for encashment. Having come to know that the complainant has not performed his part of the obligation, the petitioner/accused instructed the banker to stop the payment. Learned Counsel further submits that even though there was balance in her bank account, as evident from Exs.X.1 land X.2 and the evidence of DW.1, she was constrained to stop the payment. In the above circumstances, there was no intention on the part of the petitioner/accused to commit the offence as alleged. Learned Counsel further submits that since the petitioner/accused is a woman and she had no any criminal intention, imposing the sentence of imprisonment for three months is excessive.

7. On the other hand, learned Counsel appearing for the 2nd respondent/complainant submits that admittedly there is close relationship and friendship in between the petitioner/accused and the 2nd respondent/complainant and there were certain transaction with regard to the two wheelers between the complainant and the son of the petitioner/accused.

8. The point that arise for consideration is as to whether the complainant could prove his case beyond reasonable doubt so as to sustain the conviction and sentence as imposed by the both the Courts below or whether the Judgments rendered by the trial Court and the appellate Court suffers from any material illegality or irregularity warranting interference by the revisional Court?

9. **Point**:- It is not in dispute that the cheque in question was issued by the petitioner by putting the date as 06-12-2004 for a sum of Rs.15,000/-. It is also not in controversy that by the letter Ex.X.2, dated 25-11-2004, the petitioner/accused instructed the banker not to honour the cheque. It is also not in dispute that the cheque Ex.P.1 was returned by the banker in view of the instructions of the petitioner under memo Exs.P.2 and P.3. Thereafter, the complainant issued Ex.P.4 notice which was received by the petitioner/accused under Ex.P.5 acknowledgment to which she gave a reply Ex.P.6.

10. It is manifest that the issuance of cheque and its being dishonoured is not in contention. However, what is required to be seen is as to whether the petitioner/accused was having valid justification for instructing the banker not to honour the cheque. It is not in dispute that the instruction about withholding the payment of cheque can also amount to an offence provided that the said instructions should be without a valid and legally acceptable reason. It is in the evidence of PW.1 that the petitioner/accused took a hand-loan of Rs.15,000/- on 10-10-2004 and issued the post-dated cheque for Rs.15,000/- by putting the date as 06-12-2004. This transaction is said to have taken place in the presence of one Alapati Bose. PW.1 is elaborately cross-examined and the material admissions that are elicited from him are that there were some minor misunderstandings in between the son of the petitioner/accused and the complainant in the matter of exchange of two wheelers. It is suggested to PW.1 that the condition precedent for presentation of the cheque Ex.P.1 into the bank was that the complainant should execute a promissory note in favour of the petitioner/accused and only thereafter the cheque should be

presented. This contention of the petitioner/accused is reiterated in her evidence as DW.1. Both the Courts below have disbelieved this theory. If there was no amount due and payable by the petitioner/accused to the complainant, why did she issue the cheque Ex.P.1 and the contention that the complainant was to execute a promissory note for the equivalent sum is also not convincing. The cheque was dated 06-12-2004 and in the last week of November, 2004 the petitioner/accused instructed the banker to stop the payment. If the petitioner/accused wants it to be believed that the cheque that is being given to the complainant is itself by way of a hand-loan for which the complainant was to execute a promissory note, the situation could have been different. Except for stating that the complainant was to execute a promissory note before presenting the cheque and since the complainant failed to execute the promissory note as agreed, she instructed the banker to stop the payment is the explanation which is not convincing.

11. Both the Courts below have concurrently found that the cheque Ex.P.1 was issued by the petitioner/accused to the complainant in discharge of a debt and the contention of the petitioner/accused is unbelievable, Upon perusing the material on record, I find myself to be in agreement with the view taken by the both the Courts below.

12. The other aspect of the matter is about the conduct of the petitioner/accused. She has examined DW.1 who is the Bank Manager who produced Exs.X.1 and X.2. The statement of account of the petitioner/accused shows that on the date when the cheque was issued and the date on which it was proposed to be presented, there was sufficient balance in her account so as to clear the cheque. Therefore, there do not appear to be any dishonest intention on the part of the petitioner/accused in issuing the cheque. However, her instructions to the banker to stop the payment is not justifiable. Having issued the cheque in discharge of her debt and even though there was balance in her account, her instructing the banker to stop the payment amounts to dishonourment of the cheque in question. However, this circumstance can be taken into consideration in the process of sentencing the petitioner/accused. As already stated, both the Courts below have sentenced the petitioner/accused to undergo imprisonment for three months and to pay a fine of Rs.500/-. The petitioner/accused is a woman, who is now aged about 54 years. Therefore, I feel that the ends of justice will be met if the sentence of imprisonment is converted into compensation to be payable by the petitioner/accused to the 2nd

respondent/complainant. The amount of cheque is Rs.15,000/-. The petitioner/accused can be directed to pay a sum of Rs.30,000/- in addition to the sentence of fine already imposed. With this modification the Criminal Revision Case is liable to be dismissed.

13. In the result, the Criminal Revision Case is dismissed subject to the modification in the matter of sentence. The sentence of imprisonment of three months is set aside instead the petitioner/accused is directed to deposit Rs.30,000/- (Rupees thirty thousand only) within one month from today in addition to the fine already imposed in the trial Court, default to suffer simple imprisonment for three months. As and when the amount is deposited, the 2nd respondent/complainant is permitted to withdraw the same.

M.S.K.Jaiswal, J

June, 2015

smr