HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.497 OF 2008

O R D E R:

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 24.03.2008, passed by the I Additional Metropolitan Sessions Judge, Hyderabad, in Criminal Appeal No.151 of 2006, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, (for short 'the Act'), vide the judgment dated 23.03.2006 in C.C.No.1391 of 2002 by the III Additional Chief Metropolitan Magistrate, Hyderabad, was confirmed.

2. The revision petitioner herein is the accused, whereas respondent No.2 is the complainant in C.C.No.1391 of 2002 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 complainant and accused are known to each other. Accused is doing business and he is the proprietor of M/s. Jyothi Industries. The accused used to take hand loans from the complainant for his business purpose and personal needs, and used to return back the amount within the agreed period and for the said hand loans, the complainant never used to take any interest or the accused never used to execute any document in favour of the complainant, and the accused has created a good trust with the complainant. Whileso, in the first week of April, 2002, the accused approached the complainant for the hand loan of Rs.2,00,000/- for his business purpose, and the complainant considered the request of the accused and in good faith gave Rs.2,00,000/- to the accused without any documentary evidence, but with a oral condition that the accused has to return the said amount

within three months. Thereafter, after the expiry of three months, the complainant approached the accused for return of the loan amount. The accused submitted that he is unable to return the amount because of his financial problems and requested the complainant to grant some time to repay the loan amount. After the time granted, the accused did not return the loan amount, but issued a cheque bearing No.419414 dated 10.08.2002 for a sum of Rs.2,00,000/- drawn on Canara Bank, Mettuguda Branch, in favour of the complainant. But, when the complainant presented the cheque in his bank on 12.08.2002, the said cheque was returned with an endorsement 'insufficient funds' in the account of the accused. The complainant after receiving the said memo, issued a legal notice to the accused calling upon him to pay the loan amount of Rs.2,00,000/- with interest at 21% p.a on 21.08.2002. The accused received the notice and gave a reply on 31.08.2002. In the reply notice, the accused reiterated the contents of the notice issued by the complainant and asserted that he has given five blank cheques to the complainant for encashment as the company was closed and not in existence and also stated that he has not given the cheque to clear the hand loan and also denied about taking the hand loan from the complainant. As the accused denied the loan given by him, the complainant filed the complaint under Section 138 of the Act.

4. The learned III Additional Chief Metropolitan Magistrate, at Hyderabad, recorded the sworn statement of the complainant and taken the complaint on file against the accused for the offence punishable under Section 138 of the Act. Thereafter, on appearance of the accused, the learned Magistrate framed a charge against him for the offence punishable under Section 138 of the Act. During trial, on behalf of prosecution, PW.1 was examined and Exs.P1 to P8 were got marked.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C, putting the incriminatory material deposed against him. The accused denied the same and got examined

DWs.1 & 2 and got marked EXs.D1 to D8 on his behalf. After hearing the arguments and after perusing the record, the trial Court held that Ex.P1 cheque was issued for discharge of legally enforceable debt and accused failed to adduce any evidence to rebut the presumption under Section 139 of the Act, therefore, found the accused guilty of the offence punishable under Section 138 of the Act, convicted and sentenced him to undergo Simple Imprisonment for a period of one year and to pay a fine of Rs.1,000/- and in default of payment to undergo Simple Imprisonment for twenty days.

6. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.151 of 2006 before the I Additional Metropolitan Sessions Judge, Hyderabad, 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 the appeal by confirming the conviction and sentence passed by the trial Court by holding that the accused had not produced any rebuttal evidence questioning the validity of the statutory notice and failed to discharge the initial burden, and that Ex.P1 cheque was issued for legally enforceable debt.

7. Being aggrieved by the concurrent finding of both the Courts below, passed in Criminal Appeal No.151 of 2006 and C.C.No.1391 of 2002, accused preferred the present revision case.

8. The learned counsel appearing for the revision petitioner/ accused argued that the trial Court as well as the appellate Court failed to consider the evidence of PW.1 and also erred in relying upon the evidence of PW.1 properly, which is in discrepancy; that the ingredients of the offence punishable under Section 138 of the Act are not constituted; that the accused issued five cheques, including the present cheque, for the purpose of security in the year 1998 to one Sandeep Shetty, who is an employee in M/s.Nitco Road Ways Limited and the said acknowledgment was marked as Ex.D5; that there is no

specific evidence about financial capacity of complainant for paying the amount of Rs.2,00,000/- and the trial Court has not considered EXs.D1 to D7 and finally argued to set aside the judgment of the trial Court as well as the appellate Court on the ground that there is no legally enforceable debt and prayed the Court to allow the revision case.

9. On the other hand, the learned counsel for the second respondent argued that the revision petitioner/accused is in the habit of taking the loan from the complainant and used to repay the same; that Ex.P1 was issued by the accused as he failed to pay the amount of Rs.2,00,000/- taken by him for his business purpose, as such the complainant issued a legal notice for which the accused gave a reply and denied the transaction; that as the accused failed to pay the said amount, complainant filed the complaint under Section 138 of the Act; that after considering the evidence of the complainant and also the accused both the trial Court as well as the appellate Court held that Ex.P1 cheque was issued for the legally enforceable debt and further, there is no rebuttal evidence produced by the accused against the presumption under Section 139 of the Act and also the appellate Court held that the accused has not examined the person by name Sandeep Shetty, to whom five cheques were issued, and prayed the Court to dismiss the revision case.

10. Now, the point for determination is --

> Whether the revision petitioner herein is entitled to set aside the concurrent finding given by both the Courts below for the offence punishable under 138 of the Act, as prayed for or not?

11. **P O I N T**: After hearing the arguments and after perusing the record, it is evident that PW.1 is the complainant, who in his evidence, supported the contents of the complaint stating about advancing loan of Rs.2,00,000/- to the accused and that accused failed to pay the amount, as such he got issued legal notice and thereafter, the accused gave a cheque Ex.P1, which was dishonoured on the ground of

‘insufficient funds’ in the account of the accused. Ex.P1 cheque was issued for legally enforceable debt and the accused failed to prove that he gave five cheques to one Sandeep Shetty, who is the employee of M/s. Nitco Road Ways Limited, thus, after considering the evidence, both the Courts below rightly held that cheque was issued by the accused for legally enforceable debt and the accused failed to rebut the presumption under Section 139 of the Act, and that accused is guilty of the offence punishable under Section 138 of the Act. Therefore, I am of the view that the findings of the appellate Court in Criminal Appeal No.151 of 2006 and the trial Court in C.C.No.1391 of 2002 needs no interference and the criminal revision is liable to be dismissed.

12. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 24.03.2008, passed by the
I Additional Metropolitan Sessions Judge, Hyderabad, in Criminal Appeal No.151 of 2006.

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

ANIS, J

Date: 17.03.2015
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