

HON'BLE SRI JUSTICE M.S.K.JAISWAL
Criminal Revision Case No.1311 of 2011

ORDER:-

The revision is filed challenging the orders of the learned X-Additional District and Sessions Judge (FTC), Ranga Reddy District at L.B.Nagar, Hyderabad, made in CrI.M.P.No.8 of 2011 in Criminal Appeal No.147 of 2008, dated 27-04-2011.

2. The revision petitioner is the respondent/accused in C.C.No.502 of 2006 on the file of the X-Metropolitan Magistrate, Cyberabad at Malkajgiri filed under Section 138 of the Negotiable Instruments Act (for short 'the Act'). The respondent herein/complainant filed the complaint alleging that the petitioner/accused has taken a hand-loan of Rs.7,51,000/- and issued cheques and when presented the cheques were dishonoured. On demand, the petitioner/accused failed to pay the amounts and hence the complaint. During the course of trial, the respondent/complainant examined himself as PW.1 and examined PW.2 and produced Exs.P.1 to P.12. On behalf of the petitioner/accused neither oral nor documentary evidence was produced. By Judgment, dated 23-10-2008, the learned X-Metropolitan Magistrate, Cyberabad at Malkajgiri, found the petitioner/accused guilty of the offence punishable under Sections 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.10,000/-.

3. Aggrieved by the said conviction and sentence, the petitioner/accused preferred Criminal Appeal No.147 of 2008 on the file of the X-Additional District and Sessions Judge (FTC), Ranga Reddy District at L.B.Nagar, Hyderabad, and pending disposal of the said appeal, the petitioner/accused filed CrI.M.P.No.8 of 2011 under Section 391 Cr.P.C., praying the appellate Court to permit the petitioner/accused to examine himself as a witness and also receive the additional evidence comprising of a returned postal cover containing the reply notice and a Xerox copy of the registration certificate of the partnership firm.

4. The petitioner in his petition contended that the Advocate engaged by him during the trial of the case before the lower Court did not properly conduct his case and consequently, some important documents could not be placed before the Court and therefore additional documents now filed be received. He further sought for permission to examine himself as a witness.

5. The petition was resisted by the respondent/complainant contending that the trial in the Calendar Case went on for a long time and the complainant, who was examined as PW.1, was elaborately cross-examined but still the petitioner/accused has filed the petition alleging that his Advocate in the lower Court did not guide him properly. It is further contended that the present petition filed by the petitioner/accused in a Criminal Appeal is nothing but a *mala fide* intention to gain more time in disposal of the appeal and cause much inconvenience to the respondent in realizing his money.

6. After hearing both sides, by order dated 27-04-2011, the learned Appellate Court dismissed the petition holding that there are no merits and that the petition is filed only to delay and procrastinate the progress of the appeal. Aggrieved by the said dismissal, the present revision is filed and it is contended that during the course of trial in the lower Court, the Advocate on record has not properly conducted the case and even the material documents which were in his custody were not filed and got marked. To the statutory notice issued by the respondent/complainant, on behalf of the petitioner/accused a reply notice was issued and the same returned unserved. This reply notice was not filed during the pendency of the trial because of the mistake on the part of the Advocate. It is further contended that the petitioner/accused was not even examined in the trial Court and hence opportunity be given to him to adduce his evidence.

7. Learned Counsel appearing for the respondent/complainant submits that more than adequate and reasonable opportunity was afforded to the petitioner/accused when the case was pending in the trial

Court and even though the complainant was examined on more than one occasion and it was even suggested to him that a reply notice was issued to him but still the Counsel as not taken steps during the course of trial to file the office copy of the reply notice or the returned postal cover and even he did not enter the witness box. It is further submitted that it is not as though that the petitioner/accused was denied of the reasonable opportunity. It is submitted that when the complainant PW.1 was in the witness box, on behalf of the petitioner/accused Ex.P.13 was confronted and marked. Nothing prevented the petitioner/accused to get marked the office copy of the registered reply notice or the returned postal cover. Even the Xerox copy of the registration certificate of the partnership firm which was very much in the possession of the petitioner/accused when the trial was going on, the same has not been produced. It is further contended that after the evidence of the complainant was concluded, the accused was examined under Section 313 Cr.P.C., and thereafter, on behalf of the petitioner/accused detailed written arguments were also filed. Only thereafter, the trial Court has disposed of the Calendar Case and in that view of the matter, it cannot be said that the Counsel of the petitioner/accused in the lower Court has not conducted the case properly or guided the petitioner/accused correctly.

8. The case is based upon four cheques said to have been issued by the petitioner/accused and each cheque is for Rs.1,87,750/-, totalling to Rs.7,51,000/-. The cheques were to be encashed on different dates from 15-08-2005 to 30-07-2006. Out of four cheques, two cheques were presented and the same were dishonoured. Statutory notice was issued by the complainant calling upon the petitioner/accused to pay the amounts. He failed to pay the amounts and hence the complaint was filed.

9. It is the contention of the petitioner/accused that to the legal notice, he gave a reply which however was not served and returned. The Court below has drawn an adverse inference against the petitioner/accused for not even giving reply to the statutory legal notice issued by the

respondent/complainant. Office copy of the said legal notice and the returned postal cover are now sought to be filed. In addition to that, the petitioner/accused who did not examine himself as a witness during the pendency of the Calendar Case, is now seeking leave of the Court to examine himself in the appeal.

10. The record reveals that the trial in the trial Court commenced on 13-02-2007 and it went on till 24-09-2008 i.e., for nearly one and a half years. During that period, PWs.1 and 2 were examined and they were elaborately cross-examined. On 27-12-2007, PW.1 was cross-examined and he denied having received any legal notice. Thereafter, PW.1 was again recalled for further cross-examination, nearly eight months thereafter, and even on 22-08-2008, when PW.1 was further cross-examined by the petitioner/accused, he was not confronted with the office copy of the reply notice or the returned postal cover. Significantly, the documents, which are now sought to be filed, are very much in possession of the petitioner/accused. By putting blame on the Counsel for improper conducting of trial, the petition is filed. As already stated, both witnesses were elaborately cross-examined and the petitioner/accused was also examined under Section 313 Cr.P.C., and thereafter, when called to enter defence, no defence was produced. On the other hand, on behalf of the petitioner/accused, detailed written arguments were filed. Therefore, it is difficult to believe that the petitioner/accused was not having effective legal assistance during the course of trial.

11. It is noticed from the Judgment of the learned Magistrate that a contention was raised on behalf of the petitioner/accused that the legal notice Ex.P.9 issued by the respondent/complainant prior to filing the complaint is defective and it was contended that even though only two cheques amounting to Rs.3,75,500/- were presented and dishonoured, the complainant claim the total amount of Rs.7,51,500/- in the legal notice. On behalf of the petitioner/accused, during the course of

arguments before the trial Court, the decision of the Supreme Court reported in 2003 (2) Supreme (CrI) 715 was also relied upon. Therefore, it cannot be said that the case of the petitioner/accused was not properly conducted by the learned Counsel in the trial Court.

12. Learned Appellate Court has considered all the above aspects in proper perspective and held that there are no merits in the petition filed by the petitioner/accused to receive the additional evidence and adduce evidence in the appellate Court. There are no merits in the revision and the same is liable to be dismissed.

13. In the result, Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

September, 2015

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