HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.399 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 07-03-2008, passed by the XI Additional District and Sessions Judge (F.T.C.) Guntur at Tenali, whereunder and whereby the conviction of the accused was confirmed for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. (for short, 'the Act')

2. The revision petitioner herein is accused in C.C.No.264 of 2003, whereas respondent No.1 is the complainant and respondent No.2 is the State. 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 the prosecution in brief is that complainant/ respondent No.1 herein filed a complaint against the accused/petitioner for the offence punishable under Section 138 of the Act stating that the accused borrowed a sum of Rs.30,000/- on 14-02-2002 for his family expenses agreeing to discharge the same with interest at 18% p.a. and executed a promissory note on the same day by incorporating the above terms and conditions.. After repeated demands, on 04.03.2003 the accused issued a cheque bearing No.0159102 for Rs.25,000/- drawn on Chaitanya Grameena Bank, Repalle Bank, Repalle Branch. When the said cheque was presented on 15.04.2003, the same was dishonoured due to insufficient funds in the accused account and returned the same to the complainant. On 29.04.2003, the complainant got

issued a legal notice to the accused demanding payment of the cheque amount within 15 days from the date of receipt of that notice. On 05.05.2003, the accused received the said notice and kept quiet. Hence, the accused had committed an offence punishable under Sections 138 and 142 of the Negotiable Instruments Act.

4. The learned Judicial Magistrate of First Class took cognizance of the case and framed charge for the offence punishable under Section 138 of the Act against the accused. During the trial, on behalf of the prosecution, the complainant himself was examined as PW.1 and Exs.P1 to P5 were marked.

5. After closure of prosecution evidence, accused was examined under Section 313 Cr.P.C by putting the incriminatory material deposed against him. The accused denied the incriminatory material and reported no oral or documentary evidence.

6. The trial Court, after considering the oral and documentary evidence, found the accused guilty of the offence under Section 138 of the Act and sentenced him to suffer Rigorous Imprisonment for six months and a fine of Rs.5,000/- in default Simple Imprisonment for six months.

7. Aggrieved by the judgment of the trial Court, the accused preferred Criminal Appeal No.384 of 2005 on the file of XI Additional District and Sessions Judge (F.T.C.) Guntur at Tenali.

8. The appellate Court after considering the evidence on record dismissed the appeal vide its judgment dated 07-03-2008. But, the sentence of imprisonment of six months was reduced to three months and fine amount imposed by the trial Court is

unaltered.

9. Aggrieved by the judgment of the appellate Court, the accused preferred the present revision.

10. The learned counsel appearing for the accused argued that the trial Court without appreciating the evidence on record convicted the petitioner; that the prosecution failed to prove the guilt of the accused beyond reasonable doubt; that P.W.1 failed to prove that the cheque was issued towards legally enforceable debt; that P.W.1 is a money lender and in habit of filing false cases; that P.W.1 has no prior acquaintance with the accused; that P.W.1 also not filed any suit for recovery of amount; that evidence of P.W.1 is not corroborated with each other and he prayed the Court to allow the revision.

11. On the other hand, the learned counsel for the respondent/complainant argued that the complainant, who examined as P.W.1 categorically stated about advancing the amount to the accused for a sum of Rs.30,000/- for his family necessities and executed a promissory note, Ex.P1 on 14-02-2002; that in spite of repeated demands, the accused issued a cheque, Ex.P2 on 04-03-2003 for a sum of Rs.25,000/-; when the said cheque was presented, it was dishonoured due to insufficient funds, as such the complainant issued a legal notice on 24-04-2003 and the same was received by the accused but did not give any reply; thus P.W.1's evidence is clear and proved that the accused committed the offence under Section 138 of the Act and further the cheque was issued for discharge of legally subsisting debt; that the accused has not rebutted the presumption under Section 139 of the Act and prayed to dismiss the revision.

12. Now, the point for determination is --

> "Whether the petitioner is entitled for setting aside the concurrent judgment of the Courts below for the offence punishable under Section 138 of the Negotiable Instruments Act?"

13. **<u>P O I N T</u>**:

A perusal of the record shows that the complainant examined himself as P.W.1. As per his evidence, on 14.02.2002 the accused received a sum of Rs.30,000/- for his family necessities and executed Ex.P1-promissory note. Thereafter, the accused failed to pay the amount to the complainant. On the request of the complainant, the accused issued Ex.P2-cheque on 04.03.2003 for a sum of Rs.25,000/- towards part payment. The complainant presented the said cheque in his bank and on 15.04.2003 the same was dishonoured due to insufficient funds. Thereupon P.W.1 issued a legal notice on 24.04.2003 demanding payment from the accused. Even though, after receipt of notice, the accused neither paid the amount nor give a reply. Therefore, the petitioner filed the present complaint under Section 138 of the Act.

14. A perusal of Ex.P2-cheque dated 04.03.2003 shows that it was issued by the accused for discharge of legally subsisting debt and the accused has not rebutted the presumption under Section 139 of the Act. Further, there is no evidence adduced by the accused that P.W.1 is a money lender and doing money lending business. A perusal of the record shows that as the accused failed to pay the amount, in spite of repeated demands, P.W.1 issued legal notice and the same was received by the accused under Ex.P5 but he did not give any reply. In view of the evidence of P.W.1 and documentary evidence Exs P1 to P5 it is proved that the accused committed the offence under Section 138 of the Act.

15. The trial Court, after considering the oral and documentary evidence held that the accused committed the offence punishable under Section 138 of the Act, Hence, the concurrent findings of the trial Court as well as appellate Court that the accused committed the offence under Section 138 of the Act, needs no interference.

16. Accordingly, the Criminal Revision Case is dismissed.

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

ANIS, J

20-03-2015
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