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

CRIMINAL REVISION CASE No.2628 OF 2013

ORDER:-

The criminal revision case is filed against the Judgment dated 30.12.2013 in Criminal Appeal No.80 of 2013 on the file of the III Additional Sessions Judge, Guntur. The petitioner/accused was tried for an offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') by the learned Special Judicial First Class Magistrate for Prohibition and Excise, Guntur in C.C.No.387 of 2011 and by Judgment dated 19.02.2013, the learned Magistrate found the petitioner/accused guilty of the offence punishable under Section 138 of the Act and convicted and sentenced him to undergo simple imprisonment for one year and to pay fine of Rs.5.000/- in default to suffer simple imprisonment for three months. The petitioner/accused preferred the appeal and the learned appellate Court confirmed the findings of the trial Magistrate and dismissed the appeal. Hence, the revision.

2. The 1st respondent/*de facto* complainant filed the complaint alleging that the petitioner/accused borrowed an amount of Rs.1,00,000/- on 11.12.2008 from the complaint for his family expenses and executed Ex.P1-promissory note in favour of the complainant agreeing to repay the same with interest @25% p.a, that on repeated requests, the petitioner/accused issued Ex.P2-cheque bearing No.690587, dated 29.09.2010 for Rs.80,000/- payable at UCO Bank, Guntur, that when the cheque was presented for collection on 05.10.2010 with the State Bank of India, Sangadigunta Branch, Guntur, the same returned dishonoured with an endorsement "funds insufficient", that on receiving the intimation from the bank, the respondent/complainant got issued Ex.P4-legal notice on 13.10.2010, that the petitioner/accused received the same under Ex.P5-acknowledgment, but failed to pay the amount or even give reply to the notice. Hence, the complaint.

3 . During the course of trial, the complainant examined himself as PW.1 and produced Exs.P.1 to P.5. The petitioner/accused denied the evidence on record. In defence, the petitioner/accused examined himself as D.W.1 besides examining DWs2 & 3 and no documentary evidence was produced on his behalf.

4. Learned Counsel appearing for the petitioner/accused submits that the conviction and sentence of the petitioner/accused by both the Courts below is erroneous.

Learned Counsel further submits that both the courts below failed to see that the petitioner/accused gave blank promissory note and blank cheque to the 1st respondent/complainant towards security to the chit transaction. It is further contended that the 1st respondent/complainant instead of returning Exs.P1 and P2 to the petitioner/accused after payment of the chit amount, intentionally filed the criminal case in order to get wrongful gain, but the said fact was not considered by both the courts below. The learned counsel further contended that the Courts below failed to consider that though the petitioner/accused did not give any reply to the notice of the 1st respondent/complainant, the legal right of the petitioner/accused never be defeated. Learned counsel for the petitioner/accused further contends that both the Courts below failed to consider the evidence of DWs 2 and 3, who spoke running of chit by PW 1 and giving blank promissory note and cheque by the accused towards security of prized chit amount. It is further contended that the Courts below failed to appreciate all the contentions raised by the petitioner/accused in proper perspective and convicted the petitioner/accused erroneously.

5. Learned Counsel appearing for the respondent/complainant submits that admittedly the petitioner/accused has issued Ex.P1-promissory note and Ex.P2-cheque to discharge his liability, which was dishonoured, that the complainant issued the legal notice, the office copy of which is Ex.P4, and the petitioner/accused received the same under Ex.P5. Admittedly, no payment is made nor any reply is issued. It is further contended that the petitioner/accused did not produce any document to show that he is not liable to pay the amount, both the Courts below have properly appreciated the material on record and the same do not warrant any interference. It is further submitted that the petitioner/accused is an educated person and it is difficult to believe that he would have issued Ex.P2-cheque without there being any legally enforceable debt. His silence in spite of notice and during the course of trial shows that he has no defence and his contention that Ex.P2-cheque was not issued for enforcing any legally enforceable debt is incorrect. Hence, the revision is liable to be dismissed.

6. The point for consideration is as to whether the Judgments of the Courts below is based on legally acceptable evidence or whether it needs interference?

7 . The contention of the petitioner/accused is that there is no legally enforceable debt as on the date when the cheque was issued. His contention is that

there was a chit being run by the 1st respondent/complainant and towards security, blank promissory note and blank cheque were obtained from the petitioner/accused. PW.1 obtained Ex.P2 blank cheque duly signed by the petitioner/accused as security of chit and subsequently filled up the contents and filed the present case, though the petitioner/accused discharged the chit amount.

8. DW.1 in his evidence admitted that the cheque in question was issued by him. However, he denied that the said cheque was not issued towards legally enforceable debt, but it was issued towards security of chit prized money. Learned Counsel appearing for the petitioner relied upon a decision of our High Court reported in ***Avon Organics Ltd. V. Pioneer Products Limited & Ors.***, wherein it is held that a blank cheque cannot be enforced even though it is issued for legally enforceable debt. In para 10 of the said authority, the learned Judge observed that whenever blank cheques are filled up and presented, a presumption can be drawn under Section 139 of the Act, but it is a rebuttal presumption and that the question is whether the accused is able to rebut the presumption.

9. The contention of the petitioner/accused is that the date, amount and name were not mentioned when the cheque was given to PW.1. There is no dispute with regard to the legal proposition that once issuance of a cheque in question is accepted, it is for the petitioner/accused to show that the same was issued without there being the existence of any legally enforceable debt. If the petitioner/accused can discharge the said presumption by raising a probable defence, the onus shifts on the complainant to prove that the cheque in question was issued in discharge of the legally enforceable debt. Learned Counsel appearing for the petitioner/accused relies upon two decisions in ***M.S.Narayana Menon @ Mani v. State of Kerala and another*** and ***Krishna Janardhan Bhat v. Dattatraya G.Hegde.*** In the decision **Narayana Menon** (2 supra), the legal proposition is laid down with which there is no dispute. In the decision **Krishna Janardhan Bhat** (3 supra) the Supreme Court held at paras 34 and 35 as under:-

> "Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities". Inference of preponderance of probabilities can be drawn not only from the material brought on record by the parties but also by reference to the circumstances upon which he relies.
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> A statutory presumption has an evidentiary value. The question as to

> whether the presumption whether stood rebutted or not, must, therefore, be determined keeping in view the other evidence on record. For the said purpose, stepping into the witness box by the appellant is not imperative. In a case of this nature, where the chances of false implication cannot be ruled out, the background fact and the conduct of the parties together with their legal requirements are required to be taken into consideration".

10. In order to successfully rebut the legally permissible presumption, the petitioner/accused should establish the fact that he has signed on the cheque in question without there being any liability. He having failed to do so, the irresistible inference that can be drawn is that the petitioner/accused has issued the cheque in question in discharge of legally enforceable debt. Though the petitioner/accused contended that he issued Ex.P2-cheque towards security of the chit prized money, but the complainant denied about running of a private chit and membership of the petitioner/accused. Both the Courts below have appreciated the above aspects in proper perspective and held that the petitioner/accused is guilty of having issued Ex.P2-cheque on 29.09.2010, which was dishonoured by the bank on 05.10.2010. In that view of the matter, the findings of both the Courts below do not warrant any interference and the same is liable to be confirmed.

11. The complainant/PW1 has produced satisfactory and acceptable oral and documentary evidence in support of his case. The Courts below have sentenced the petitioner/accused to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/-. Taking into consideration the totality of the facts and circumstances of the case, I feel that the ends of justice will be met if the sentence of imprisonment is set aside by enhancing the fine amount. As per Section 138 of the Act, the petitioner/accused is liable to imprisonment up to two years, or with fine, which may extend to twice the amount of cheque or with both. Therefore, the petitioner/accused can be directed to pay fine of Rs.1,50,000/- (Rupees one lakh fifty thousand only), in addition to the fine of Rs.5,000/-, already imposed by the Courts below, which shall be deposited in the trial Court on or before 20.01.2016, in default, the petitioner/accused shall suffer simple imprisonment for a period of six months.

12. In the result, the Criminal Revision Case is dismissed confirming the conviction of the petitioner/accused for the offence punishable under Section 138 of

the N.I.Act. However, the sentence of one year imprisonment is set aside, instead the petitioner/accused is sentenced to pay a fine of Rs.1,50,000/- (Rupees one lakh fifty thousand only), in addition to the fine of Rs.5,000/-, already imposed by the Courts below, which shall be deposited in the trial Court on or before 20.01.2016, in default, the petitioner/accused shall suffer rigorous imprisonment for a period of six months. It is made clear that as and when the amount is deposited, the 1st respondent/complainant shall be entitled to withdraw Rs.1,50,000/- without furnishing any security.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: .11.2016

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