

THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY THIS THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE MRS JUSTICE ANIS

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CRIMINAL REVISION CASE No.1686 of 2007

Between:

Gangavaram Siva Parvathi Reddy

..... PETITIONER

AND

Sarangam Venkateswarlu

.....RESPONDENT

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The Court made the following:

HON'BLE MRS JUSTICE ANIS

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CRIMINAL REVISION CASE No.1686 of 2007

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ORDER:

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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 03.12.2007, passed by the V Additional Sessions Judge (Fast Track Court), Guntur, in Criminal Appeal No.80 of 2006, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 138 of Negotiable Instruments Act, vide the judgment dated 02.02.2006 in C.C.No.429 of 2004 by the IV Additional Munsif Magistrate, was confirmed.

2. The revision petitioner herein is sole accused and the 1st respondent herein is the complainant in C.C.No.429 of 2004 before the trial Court. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the C.C. before the trial Court.

3. The case of the prosecution in brief is that the accused borrowed a sum of Rs.1,50,000/- from the complainant on 21.04.2004 for the purpose of her hostel expenses and executed a promissory note in his favour. On several demands, the accused issued a cheque for Rs.1,00,000/- on 29.05.2004 drawn on Andhra Bank, Bapatla towards part payment. When the complainant presented the said cheque before his banker Indian Bank, Nehrunagar Branch, Guntur for collection on 30.05.2004, the same was dishonoured and returned to him with an endorsement "funds insufficient". When the said fact was informed to the accused, he did not respond and hence the complainant got issued a legal notice to the accused on 22.06.2004, for which, the accused gave a vague reply on 28.06.2004. As the accused failed to pay the cheque amount, the complainant filed the complaint under Section 138 of the Negotiable Instruments Act.

4. The learned IV Additional Munsif Magistrate, Guntur, took cognizance of the case on 15.09.2004 against the accused for the offence punishable under Section 138 of Negotiable Instruments Act. During trial, to prove the case of the complainant, besides examining himself as PW 1, he has examined PW 2, who is the Manager of the Indian Bank to prove his case and marked Exs.P1 to P7.

5. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C putting all incriminating material available against her. Accused denied the material evidence and reported no oral evidence, but marked Exs.D1 to D7 on her behalf to prove her defence.

6. The trial Court, after hearing on either side and after considering the oral and documentary evidence, found the accused guilty of the offence punishable under Section 138 of Negotiable Instruments Act, convicted

the accused for the said offence and sentenced her to undergo simple imprisonment for a period of four months and to pay a fine of Rs.1,000/-, and in default, to undergo Simple Imprisonment for a period of one month.

7. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.80 of 2006 before the V Additional Sessions Judge (Fast Track Court), Guntur, where the Appellate Court after reappraisal of the evidence and material on record, dismissed the appeal while confirming the conviction and sentence passed by the trial Court.

8. Being aggrieved by the judgment of the Appellate Court passed in Criminal Appeal No.80 of 2006, the accused preferred the present revision case.

9. The learned counsel for the revision petitioner/accused argued that the complainant has failed to prove the fact that there is legally enforceable debt, as such, the complaint itself is not maintainable, that the trial Court as well as the Appellate Court failed to consider that there is no enforceable debt between the accused and the complainant and the alleged promissory note is a fabricated and forged one, and that the complainant suppressed Ex.D1 agreement entered into between the parties as well as notice in the complaint. It is also argued that the complainant also suppressed the fact of four vouchers, which were marked as Exs.D3 to D6. It is also argued that when Cheque for Rs.1,00,000/- was given towards part payment, no endorsement was made on the backside of the promissory note, and finally argued that the complainant has not made out any case against the accused for the offence punishable under Section 138 of Negotiable Instruments Act and prayed the Court to allow the revision and set aside the judgment of the appellate Court as well as the trial Court. The learned counsel for the petitioner relied on a judgment of Kerala High Court in ***J.Daniel v. The State of Kerala***^[1] wherein the High Court of Kerala, while dealing with Sec.23 of the Indian Contract Act, held as under;

“A reading of the above would show that any agreement opposed to law or forbidden by law is not enforceable. Every debt or liability upon which a cheque is issued is not enforceable. For example, if an officer of defence force receives a cheque for consideration on the basis of an agreement to pass on military secrets, such a cheque is not enforceable under Section 138 of the Act.”

10. The respondent's counsel is not present and there is no representation on behalf of the complainant/respondent.

11. Now the point that arises for consideration is whether the conviction and sentence imposed by the Courts below is legal and sustainable.

12. Point:

A perusal of the oral and documentary evidence shows that the complainant examined himself as PW 1 and examined the Branch Manager of the Indian Bank as PW 2. According to the complainant, the accused borrowed a sum of Rs.1,50,000/- on 21.04.2004 for purpose of hostel expenses and executed Ex.P1 promissory note, agreeing to repay the same with interest @24% p.a. On demand, the accused issued Ex.P2 cheque for Rs.1,00,000/- towards part payment, and when the said cheque presented in the bank, the same was dishonoured due to lack of funds in the account of the accused. The complainant got issued a legal notice to the accused demanding payment of cheque amount, for which the accused gave reply. PW 2, the Manager of Indian Bank clearly stated that the complainant presented Ex.P2 cheque and the same was returned with Ex.P3 memo stating that there are insufficient funds in the account of the accused.

13. The main contention of the learned counsel for the petitioner/accused is that there was Ex.D1 agreement entered into between the complainant and accused with regard to Joseph's Children Home at Nehrunagar, Guntur, which is agreed to be maintained by the accused under supervision of the complainant. The further contention of

the learned counsel for the accused is that in terms of Ex.D1 agreement, and as per vouchers Exs.D3 to D6, the Home established by the accused is being maintained by the complainant with the funds of the accused.

14. The contention of the complainant is that Ex.P1 is not given for to run the Home and it was executed only for the amount borrowed by the accused.

15. The petitioner/accused has not adduced any oral evidence, much less his own evidence to support his contentions that Exs.P1 and P2 were not issued towards the loan amount. With regard to contention of the accused that the complainant suppressed the fact of Ex.D1 agreement and Exs.D3 to D6 vouchers, as seen from the oral and documentary evidence adduced by the complainant, the accused borrowed the amount for hostel expenses and issued Ex.P2 towards part payment, as such, the question of mentioning Exs.D1 to D7 in the complaint does not arise. In the absence of any evidence to discredit the testimony of the complainant as to the execution of Ex.P1 promissory note and Ex.P2 cheque, the accused has failed to discharge his burden. So far as the decision of the Kerala High Court, as stated supra, relied on by the accused is concerned, the facts of the said case are not applicable to the facts of the present case, further, Section 23 of the Indian Contract Act has no application to the facts of the present case.

16. Both the Courts below have concurrently held that the complainant has proved the ingredients of Section 138 of Negotiable Instruments Act and found the accused guilty of the offence charged and accordingly, convicted and sentenced the accused, as stated supra. I find no infirmity or illegality, warranting interference with the said findings.

For the aforesaid reasons, the Criminal Revision Case is dismissed confirming the conviction and sentence. The trial Court shall take steps, in accordance with law, for apprehending the accused for serving the sentence.

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

ANIS, J

Date: 18.03.2015
Dsr

[\[1\]](#) 2005 CrI.L.J.4095