THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.54 OF 2008

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ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') by the petitioner/accused is directed against the judgment dated 17.01.2008 of the learned Special Sessions Judge-cum-V Additional District Judge at Karimnagar passed in Crl.Appeal No.10/2005.

1. **(a)** By the judgment dated 17.01.2005 in C.C.No.424/2000 the learned Judicial Magistrate of First Class, Huzurabad of Karimnagar District found the accused guilty of the offence punishable under Section 138 read with Section 142 of the Negotiable Instruments Act and convicted him under Section 255(2) of the CrPC and sentenced him to undergo simple imprisonment for a period of six months and pay a fine of Rs.1000/- and suffer simple imprisonment for one month in default in payment of the said fine amount. The learned Additional Sessions Judge while dismissing the aforementioned appeal of the accused had confirmed the judgment of the trial Court in all respects.

2. I have heard the submissions of the learned counsel for the petitioner/accused, the learned counsel for the first respondent/complainant and the learned Public Prosecutor representing the second respondent-State. I have carefully perused the material record.

3. At the time of hearing, the learned counsel for the accused had contended that the ingredients constituting the offence are not made out and that there is no reliable and legal evidence for recording the conviction against the accused for the alleged offence and that the testimonies of PWs 1 to 3 are discrepant and are highly interested and that the Court below had erred in placing reliance on the testimonies of the said witnesses by failing to take note of the fact that the cheque was never issued by the accused to the complainant and that the Court below had failed to take note of the fact that the said cheque was issued to a chit fund company and that the complainant himself had given a letter admitting the receipt of money in a sum of Rs.80,000/- and that the Court below had failed to take note of the fact that the said amount of Rs.80,000/- was paid to the complainant in the presence of DW2 and the Sub-Inspector of Police and that the Court below had failed to see that the evidence of DWs 1 and 2 demolished the case of the prosecution and that the Court below had erred in convicting the accused instead of acquitting him.

4. The learned counsel for the complainant had submitted that the Courts below had properly appreciated the oral and documentary evidence on record and rightly recorded concurrent findings of fact and that the well reasoned findings in the well considered judgments of the Courts below do not call for interference and that none of the grounds urged by the accused deserve consideration in the light of the evidence adduced on record and that there is no merit in any of the contentions urged before this Court by the accused and that the revision case is devoid of merit and is liable to be dismissed.

5. Now the points for determination are: -

1. **Whether the complainant successfully brought home the guilt of the accused, beyond reasonable**

doubt, for the offence punishable under Section 138 read with section 142 of the Negotiable Instruments Act?

2. Whether the accused had made out valid and sufficient grounds for his acquittal of the said offence? And, if so, whether the judgment of the Court below is liable to be set aside under the facts and in law?

6. <u>POINTS</u> :

6. (a) The case of the complainant, in brief, is this: "The accused who is his relative had borrowed an amount of Rs.80,000/- on 06.05.2000 from the complainant having promised to refund the same within one month from that day. Subsequently, on 07.06.2000 the accused had issued a cheque for the said amount, drawn on SBH, Mulkanoor branch, towards discharge of the said debt. When the complainant had presented the said cheque for collection through Shathavahana Grameena Bank, the said cheque was dishonoured and was returned with an endorsement showing the reason for return as "account closed". The complainant had got issued a legal notice to the accused. The same was received by him on 30.06.2000. The accused did not either issue a reply or comply with the demand in the notice. Hence, the complaint was filed."

6. (b) During the course of trial, the complainant and his supporting witnesses were examined as PWs 1 to 4 and exhibits P1 to P5 were marked on the side of the complainant. The accused and his supporting witnesses were examined as DWs 1 and 2 and exhibits D1 to D4 were marked on his side.

6. (c) Coming to the evidence that was brought on record, it is necessary to first examine the evidence of PW1, who is the complainant. PW1 had stated that the accused is related to him and that he had obtained from him a hand loan of Rs.80,000/- for the maintenance of his fair price shop promising to pay the same within one month and that later the accused had issued exhibit P1-cheque for Rs.80,000/- towards discharge of the above said debt and that the said cheque, when presented for collection, was dishonoured and was returned with exhibit P2-endorsement of the Bank showing the reason for return as “account closed” and that therefore, the complainant had got issued a notice dated 24.06.2000 to the accused under the original of exhibit P3 and that the accused had received the same under exhibit P5 acknowledgment and that despite receipt of the said notice the accused did not either pay the amount due or issue any reply and hence, he is constrained to file the complaint. In his cross examination, the following points were elicited. “I know the accused for the last 20 years. It is true that on 06.05.2000 I gave Rs.80,000/- to the accused at my residence. It is true that on 07.06.2000 I had approached the accused and requested him for payment. Immediately after receiving the cheque I presented the same for collection. It was returned to me after it was dishonoured. It is true that the accused is a chit member in Huzurabad Chit Funds Limited (for short, ‘the HCFL’).” Thus, PW1 had maintained his stand in his evidence. PW1 had denied the following suggestions, which were put to him in his cross examination: ‘It is incorrect to suggest that I am the Director of Surya Theja Housing and Finance Limited, Kumarapalli, Hanamkonda (for short, ‘the STHFL’). It is true that I am one of the Directors of the Huzurabad Chit Fund Company. It is incorrect to suggest that the Huzurabad Chit Fund Company has to pay Rs.1 lakh to the accused. Witness adds that the Huzurabad Chit Fund Company had already paid Rs.1 lakh to the accused. It is incorrect to suggest that once a Panchayath was held between me and the accused at Bheemdevarapally Police Station. The document dated 26.10.1999 confronted to me was not scribed by me. It is not correct to suggest that the accused has not given exhibit P1-cheque to me and that the exhibit P1-cheque was given to Surya Teja Housing Finance Limited in the year 1996. It is incorrect to state that once Panchayat was held between me and the accused at Subedari in Hanamkonda in the year 2000 and that at that time the counsel for the accused by name Sri A.V.Ranga Rao was one of the elders on behalf of the accused. It is incorrect to state that in the Panchayat held in Subedari no result has come out and for that reason I had approached Bheemadevarapally Police Station. I do not know one Nagender, S.I. of Police and Raju, writer of the said Police Station. It is not correct to state that I have to pay Rs.1 lakh to the accused and the accused need not pay any amount to me. It is not correct to state that by taking the cheque given by the accused to Surya Teja Housing Finance Limited, Warangal, I have filed this case against the accused.'

6. **(d)** PW2 in his affidavit filed in lieu of examination in chief had stated that on 06.05.2000 he went to the house of the complainant and that at that time the accused came to the house of the complainant and that the complainant had given Rs.80,000/- to the accused in his presence and that the accused had promised to repay the said amount within a month. He had admitted in his cross examination that no document was executed in his presence and that the accused was alone present there. When it was suggested to him that he does not know who the accused is and that the accused never came to the complainant's house and that the complainant never gave any amount to the accused in his presence, he had denied the said suggestions as 'not true'. He had admitted that he does not know whether the complainant is doing chit fund business or not. When it was suggested to him that he is a friend of the complainant and hence, he is deposing falsehood, he had denied the said suggestions.

6. **(e)** PW3 in his affidavit filed in lieu of chief examination had stated that on 07.06.2000 he went to the house of the complainant and that at that time the accused came there and gave a cheque for an amount of Rs.80,000/- drawn on State Bank of Hyderabad, Mulkanoor branch. In his cross examination, he had stated that the accused and the complainant had conversation in his presence and from that he came to know that the accused gave a cheque to the complainant towards payment of money. He had also stated that he does not know whether the complainant is the Director of a chit fund company or not. When it was suggested to him that the accused never gave the cheque to the complainant at any point of time, he had denied the said suggestion.

6. **(f)** PW4 is the Manager of SBH, Mulkanur. He had testified that exhibit P1-cheque belongs to the accused and that exhibit P2-return memo was issued by his bank by stating the reason for return of cheque as ‘account closed’. In his cross examination, he had stated that he does not know on what date the account of the accused was closed but, had stated that the cheque was not passed as the account was closed. He had asserted that since the accused is a customer of the bank even as on today, he can identify the signature of the accused.

6. **(g)** Now coming to the defence of the accused, his case is that PW1 is the Director of Surya Teja Housing Finance (P) Limited and also of Huzurabad Chit Fund (P) Limited, Kumarpally, Hanamkonda and that exhibit P1-cheque was given by the accused to the said finance company in the year 1996 and that PW1 had filed a case against the accused by taking the cheque given to the said finance company. His further defence is that he has to get Rs.1 lakh from the Huzurabad Chit Fund Company of which the PW1 is one of the Directors. Be it noted that it is not even suggested to PW1 that the accused did not borrow Rs.80,000/- from him. PW1 had stated that the accused is a member of one of the chit groups of the said chit fund company, but Rs.1 lakh which was due to the accused was paid by the chit fund company. In support of the defence, the accused had stated in his affidavit filed in lieu of the examination in chief as follows: 'I was one of the chit members in Surya Teja Housing Finance (P) Limited. I have obtained a loan from the finance company and at that time I gave a blank promissory note and a blank cheque and a registered document for collateral security. The blank cheque is bearing No.0308340. After several demands the Manager of the bank instructed to enter the blank cheque in my passbook. On 26.10.1999 there was a Panchayat held at the Police Station, Bheemadevarapally Mandal Headquarters. The Panchayat elders decided that I should pay Rs.90,000/- to the Surya Teja Housing finance (P) Limited. I paid the amount and had obtained receipt from the Director, Foreman i.e., PW1. The names of the Panchayat elders were mentioned on the backside of the receipt. I never approached PW1 for hand loan and never gave him the cheque.' In the cross examination, the relationship of the accused with PW1 is admitted. It is also admitted that the accused is running a fair price shop. But, he had denied that he had borrowed an amount of Rs.80,000/- from the complainant for his business purpose. He had also denied the issuance of cheque under exhibit

P1 to the complainant towards discharge of the said debt. He had admitted that he had received the notice under the original of exhibit P3 got issued by the complainant. When it was suggested to him that he had closed the bank account to deceive the complainant, he had denied the said suggestion. He had admitted that he has not filed any document to show that the complainant is a Director of Surya Teja Housing Finance (P) Limited or Huzurabad Chit Fund Private Limited. When it was suggested to him that no panchayat was arranged on 26.10.1999 at Bheemadevarapally Police Station and that the elders have not affixed their signatures on receipt dated 26.10.1999, he had denied the said suggestion. He had also denied the suggestion that the complainant did not scribe the receipt dated 26.10.1999 and that the complainant has no connection with the same. In his evidence the reply notice-exhibit D1, the receipt dated 26.10.1999-exhibit D2, pass book of the Surya Teja Housing Finance (P) Limited-exhibit D3 and the pass book of Huzurabad Chit Fund Private Limited- exhibit D4 were marked. In support of his defence, DW1 had examined DW2. He had stated in his affidavit that on 26.10.1999 a Panchayat was held in the premises of Bhimadevarapally Police Station and that the accused had given Rs.90,000/- to the complainant before the Sub Inspector of Police, Bhimadevarapally and that the S.I. of Police had instructed the complainant to execute a receipt in favour of the accused and that the complainant had executed exhibit D2-receipt and that the Writer-Raju of the Police Station mentioned the names of the elders on the back side of the receipt. In his cross examination, DW2 had stated that on 26.10.1999 a galata has taken place between the complainant and the accused at the house of the accused and that the S.I of Police did not come to the house of the accused and that the accused had informed him that the elders have settled the matter and that he is not an elder in the Panchayat and that he has not affixed his signature either on the proceedings of the Pancahyat or any receipt and that he had not attended any Panchayat.

6. **(h)** I have thus carefully gone through the evidence. As already noted, it was not even suggested to PW1 that the accused did not borrow Rs.80,000/- as hand loan from PW1. On the other hand, it is specifically elicited in the cross examination of PW1 to the following effect: 'It is true that on 06.05.2000 I gave Rs.80,000/- to the accused at my residence. It is true that on 07.06.2000 I approached the accused and requested him for payment of the amount.' The evidence on the side of the complainant sufficiently established that the accused borrowed money from PW1 and that there is a legally enforceable debt. The accused is not disputing his signature on exhibit P1-cheque which was dishonoured. The only contention is that he has given the cheque to the finance company, but there is no evidence to show that the complainant is either Director of the said finance company or is associated with the finance company in any manner. PW1 had denied the suggestion that he is a Director of Surya Teja Housing Finance (P) Limited though he had admitted that he is one of the Directors of Huzurabad Chit Fund Private Limited. PW1 had also stated that Rs.1,00,000/- due to the accused under the chit transaction was already paid to him. Therefore, the defence that the complainant has come into possession of the cheque given by the accused to the finance company cannot be believed. Though the accused has filed exhibits D3 and D4 passbooks relating to the finance company and Huzurabad Chit Funds Limited, the same do not contain either the handwriting or the signatures of the complainant as admitted by DW1 in his cross examination. The evidence of DW2 about settlement in the police station by payment of Rs.90,000/- by the accused to the complainant is of no avail as he did not act either as an elder or Panchayatdar and he did not admittedly sign the Panchanama or the receipt. The accused did not examine either the police official or the writer in whose presence the matter was said to have been settled in the police station. The accused also did not examine any one of the elders whose names are mentioned on the reverse of the payment receipt dated 26.10.1999 i.e., exhibit D2. There is no evidence of reliable nature that there was a settlement in the police station and that Rs.90,000/- was paid by the accused to the complainant. Even assuming that exhibit D2 is a receipt issued by the complainant, no nexus between the said receipt-exhibit D2 and the transaction under exhibit P1-cheque was established by the accused. In exhibit D2-receipt, there was no reference either to the hand loan or to the cheque. Moreover, any receipt obtained in a police station cannot be given any credence unless the circumstance in which the said receipt was obtained are sufficiently established by examining any independent witness connected with the transaction covered by the receipt. Further, the recitals in the receipt show that the payment relates to the Surya Teja Housing Finance (P) Limited and not individually to the complainant. Therefore, the defence of the accused is not sufficient to dislodge the evidence adduced by PW1. Under Section 139 of the Negotiable Instruments Act, it shall be presumed, unless the contrary is proved, that the holder of the cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part of any debt or any other liability. Therefore, in view of the evidence on record, this court is satisfied that the necessary ingredients of the penal provision are sufficiently established and that the accused had failed to rebut the presumption by adducing necessary standard of evidence. Viewed thus, this Court finds that there is no error in the judgments of the courts below calling for interference. Further, this Court finds that there is no merit in the revision case and that none of the contentions urged in this revision case deserve consideration on merit. Accordingly, the points are answered against the accused and in favour of the first respondent/complainant.

6. **(i)** Before considering the adequacy or otherwise of the measure of punishment it is to be noted that the learned counsel for the accused placed reliance on the decision of this Court in **P. Narasimha Reddy v. D.L. Narasimha Rao**[1] and contended that if it is not established that the dishonoured cheque is issued towards a legally enforceable debt it shall follow that no offence is made out. What is to be noted is that in the case on hand as already discussed supra the evidence of PWs 1 to 3 brought on record coupled with other facts and circumstances of the case is sufficient to hold that the complainant had established, as required under law, the necessary ingredients of the penal provision. And, hence, the ratio in the decision is not helpful to the petitioner/accused.

7. Coming to the quantum of sentence, the learned counsel for the petitioner/accused would alternately submit that the imprisonment of six months is onerous and not proportionate to the gravity of the offence and that the accused who is aged more than 60 years as of now would suffer serious and irreparable loss and his health would be affected at his old age if he is sentenced to a long term of imprisonment. Therefore, he had submitted that the sentence of imprisonment may be reduced to one already undergone and that if the Court is satisfied the fine amount may be enhanced and some amount may be directed to be paid to the complainant from out of the fine amount.

8. Having regard to the mitigating and extenuating circumstances and taking into consideration the explanatory statement of the accused, the sentence of substantive imprisonment is modified and reduced from six months to the period already undergone. However, the fine amount of Rs.1000/- imposed by the Court below is enhanced to Rs.80,000/- while maintaining the in default period of sentence of simple imprisonment for one month on failure to pay the amount.

9. In the result, the Criminal Revision Case is dismissed. However, the substantive sentence of simple imprisonment for a period of six months imposed by the Court below is modified and reduced to one already undergone, but the fine amount of Rs.1000/- is enhanced to Rs.80,000/- while maintaining the in default simple imprisonment for a period of one month. The accused is given a time of four weeks from the date of receipt of a copy of this order to pay the fine amount before the trial Court. On such payment of fine amount by the accused, a sum of Rs.75,000/- shall be paid from out of the fine amount to the complainant as per the procedure. It is need less to mention that in default of payment of the fine amount, the accused shall undergo simple imprisonment for one month.

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

M.SEETHARAMA MURTI, J

19th January 2015

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[1] 2004 (2) ALD 303 AP