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

Criminal Revision Case No.577 of 2007

Between :-

Puppala Venkateswara Rao .. Petitioner

and

Dusanapudi Arjuna Rao and another .. Respondents

DATE OF JUDGMENT PRONOUNCED: 28th July, 2015

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local Newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copies of Judgment may be marked to Law Reporters/Journals Yes/No

3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

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

Criminal Revision Case No.577 of 2007

ORDER:-

The revision is directed against the Judgment, dated 20-04-

2007, in Criminal Appeal No.132 of 2005 on the file of the X-Additional District and Sessions Judge, Krishna at Machiplipatnam, under which the learned Sessions Judge had confirmed the conviction of the petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, who was sentenced to undergo simple imprisonment for six months and fine of Rs.2,000/- and Rs.63,000/- towards compensation to the complainant by the learned Judicial Magistrate of First Class, Bantumilli, Krishna District, in C.C.No.63 of 2003.

2. The facts, in brief, are as under:-

The petitioner is the accused and the 1st respondent is the complainant, who filed a complaint on the file of the Judicial Magistrate of First Class, Banumilli, which was registered as C.C.No.63 of 203. The allegations are that the petitioner/accused for his family necessities borrowed a sum of Rs.50,000/- from the complainant on 15-02-2002 agreeing to return the same with interest at 24% per annum and also executed a promissory note. The petitioner/accused also issued a post-dated cheque for Rs.63,000/- dated 16-03-2003. The complainant presented the said cheque on 07-05-2003 but the same was returned for want of funds. Notice was issued which was received by the petitioner/accused but no reply was given. Hence, the complaint.

3. The contention of the petitioner/accused is that he is having certain disputes with one S.Brahmaji, who is an Advocate at Bantumilli, and he has got filed the present complaint and also several of the cases against the petitioner/accused and his family members. It is further contended that he has not borrowed any amount from the complainant and did not issue any cheque or promissory note and that a false case has been foisted.

4. The complainant examined himself as PW.1 and produced Exs.P.1 to P.6. The petitioner/accused examined himself as D.W.1 and produced Exs.D.1 and D.2.

5. The Judicial Magistrate of First Class, after considering the oral and documentary evidence on record, by Judgment, dated 16-12-2005, held that the petitioner/accused has committed the offence and sentenced him as stated supra. The petitioner/accused was unsuccessful in his appeal. Hence, the revision.

6. The point for consideration is as to whether the complainant could prove his case beyond reasonable doubt so as to sustain the conviction and sentence as imposed by both the Courts below or whether the Judgments rendered by the trial Court and the first appellate Court suffer from any material illegality or irregularity warranting interference by the revisional Court?

7. **Point**:- The case of the complainant is that the petitioner/accused has taken hand-loan of Rs.50,000/- from the complainant on 15-02-2002 and issued post-dated cheque and also promissory note, which are marked as Exs.P.1 and P.2. When the cheque was presented, the same was dishonoured and Ex.P.3 is the memo issued by the bank on 07-05-2003. Ex.P.4 is the intimation given by the bank. Thereafter, the complainant issued a legal notice on 14-05-2003, office copy of which is Ex.P.5 and the same was received by the petitioner/accused under acknowledgment Ex.P.6. The petitioner/accused has neither replied to the said notice nor paid the amount and hence the complaint is filed.

8. On the other hand, the petitioner/accused contends that a false case has been foisted against him by one S.Brahmaji, who is the leading Advocate at Bantumilli and this case and several other cases which were got filed by the said Advocate against the petitioner/accused and his family members. For instance, it is admitted by the petitioner/accused that the complainant filed another case bearing C.C.No.130 of 2001. One Parthi Sesha Rao also filed O.S.No.3 of 2003 against the petitioner/accused. One P.Hanumantha Rao also filed the suit for recovery of money. Similarly, one Sabbisetty Radhakrishna also filed another suit for recovery of money. One

Ch.Narasimha Rao also filed a suit against him for recovery of money. Likewise, Kolla Nageswara Rao also filed another suit for recovery of money. One Ms.Nazzi also filed a suit against him in a Court at Machilipatnam, for recovery of money. Similarly, one Enduri Sri Anjaneyulu also filed a suit against him for recovery of money. The petitioner/accused admits that all the above suits are filed against him or his family members for recovery of money in different Courts. Even though it is contended by him that it is Brahmaji, Advocate, who is behind all these case, the petitioner/accused admits that he has no evidence, whatsoever, to show that it is Brahmani who is behind all these cases. That apart, no reason, whatsoever, is mentioned by the petitioner/accused as to why the said Advocate has developed enmity against the petitioner/accused. The above admission from the petitioner/accused that several suits are filed by different persons against him for recovery of money, on the other hand, shows that he is indebted to several persons in addition to the respondent/complainant herein.

9. The complainant examined himself as PW.1 and he spoke about the transaction and produced Exs.P.1 and P.2. Ex.P.1 is the promissory note, dated 15-02-2002 for Rs.50,000/-. Ex.P.2 is the cheque for Rs.63,000/- dated 16-03-2003. Even though it is contended by the petitioner/accused that the cheque and the promissory note are forged but no steps, whatsoever, are taken by him to prove his contention. On the other hand, a perusal of the signature on these two documents with the admitted signatures of the petitioner/accused clearly shows that they are all signed by the petitioner/accused himself.

10. Learned Counsel appearing for the respondent/complainant submits that the allegation that the promissory note and the cheque are forged is absolutely false and if really, there was any attempt to the forgery, there would not have been any need for the respondent/complainant to obtain so many signatures of the

petitioner/accused. Learned Counsel submits that if any attempt is made for forgery, the least possible signatures are presented before the Court. In the instant case, Ex.P.1 is the promissory note. The said promissory note not only contains the signature of the petitioner/accused but also the thumb impression which would not have been the case had there are really been any attempt to forge the signature of the petitioner/accused. Similarly, Ex.P.2 is the cheque and it contains the signature of the petitioner/accused on both sides of the cheque. If it was a forged document, there would not have been the signature of the petitioner/accused on the reverse of the cheque which is not at all required. By relying upon these circumstances, learned Counsel appearing for the respondent/complainant submits that absolutely there is no substance in the aspersion made by the petitioner/accused that Exs.P1 and P.2 are forged documents. As already stated, absolutely no material is placed on record to show that as to why the said Brahmaji, Advocate, had any enmity against the petitioner/accused or that the two documents were forged and fabricated.

11. Learned Counsel appearing for the petitioner/accused submits that the evidence of PW.1 is not convincing for the reason that he could not exactly give the place where they obtain the signatures of the petitioner/accused. It is in the evidence of PW.1/complainant that the accused put the signature on the promissory note and also the cheque in his own house. It is no doubt admitted by PW.1 that the contents of the promissory note were not filled in his presence and he cannot say as to in which language the petitioner/accused signed on the promissory note and the cheque. This admission do not, in any way, affect the credibility of the case of the complainant. When the complainant proved that Exs.P.1 andP.2 are the promissory note and cheque issued by the petitioner/accused, it is for the accused to explain as to how and under what circumstances, he has issued the cheque in question. Absolutely, no explanation is forthcoming from the

accused. That apart, before filing the case, the complainant issued Ex.P.5 legal notice, which is acknowledged by the accused under Ex.P.6. The petitioner/accused admits that he has not given any reply thereto. If really, the claim of the respondent/complainant was false, he would have immediately got a reply issued but would not keep quiet having acknowledged the legal notice.

12. Both the Courts below have properly appreciated the oral and documentary evidence on record in proper perspective and held that the complainant proved that Exs.P.1 and P.2 are the documents which were signed by the petitioner/accused and that when the cheque was presented in the bank, the same was dishonoured as per the bank memo, Ex.P.3. The petitioner/accused could not substantiate his contention that the promissory note and the cheque do not contain his signatures, that they were forged and that the present complaint is filed at the instance of one Brahmaji, Advocate at Bantumilli.

13. 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.

14. With regard to the sentence, what is noticed is that the cheque is for a sum of Rs.63,000/-. Both the Courts below have sentenced the accused to undergo simple imprisonment for six months in addition to payment of fine of Rs.2,000/- and also Rs.63,000/- towards compensation. Taking into consideration the totality of the facts and circumstances of the case and the submission of the petitioner/accused, I feel that the ends of Justice will be met if the sentence as imposed by both the Courts below should be set aside and instead the petitioner/accused is sentenced to pay a fine of Rs.1,25,000/-, out of which a sum of Rs.1,00,000/- (Rupees one lac only) should be paid to the respondent/complainant. If the petitioner/accused fails to pay the said amount within a period of three months from today, he shall undergo simple imprisonment for a period of six months.

15. In the result, the Criminal Revision Case is partly allowed

confirming the conviction imposed by both the Courts below. The sentence is however modified and the petitioner/accused is directed to pay a fine of Rs.1,25,000/- within a period of three months from today, out of which, Rs.1,00,000/- (Rupees one lac only) shall be returned to the complainant. If the petitioner/accused fails to comply with the said direction within the stipulated period, the conviction and sentence recorded against the petitioner/accused in C.C.No.63 of 2003, dated 16-12-2005 on the file of the Judicial Magistrate of First Class, Bantumilli, which was confirmed in Criminal Appeal No.132 of 2005 on the file of the X-Additional District and Sessions Judge, Krishna at Machilipatnam, dated 20-04-2007, shall sustain.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

28th July, 2015

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