THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No. 244 OF 2008

ORDER:

This Criminal Revision Case under Section 397 read with 401 of the Code of Criminal Procedure, 1973 (for short, 'the Cr. P.C') by the accused is directed against the judgment dated 15.02.2008 in Criminal Appeal No.142 of 2006 passed by the learned II Additional Sessions Judge, Kurnool at Adoni.

1. (a) By the judgment of conviction dated 22.11.2006 in C.C.No.171/2005 passed by the learned Judicial Magistrate of First Class, Adoni the learned Magistrate had found the accused guilty of the offence punishable under Section 138 read with 142 of the Negotiable Instruments Act (for short, 'the Act') and convicted him under section 255 (2) of the CrPC and sentenced him to under go simple imprisonment for six months and pay a compensation of Rs.50,000/- and suffer simple imprisonment for 2 months in default of payment of the said amount of compensation. The learned II Additional Sessions Judge while dismissing the before mentioned 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 complainant/1st respondent and I have carefully perused the material record including the grounds of revision urged by the petitioner/accused. No submissions were made on behalf of the petitioner/accused. The parties in this Revision Case shall hereinafter be referred to as the accused and the complainant for convenience and clarity.

3. Now the points for determination in the Criminal Revision Case are – ‘Whether the complainant had, by adducing necessary evidence of the required standard, brought home the guilt of the accused for the offence punishable under Section 138 read with 142 of the Act? And, if so, whether the conviction of the accused for the said offence and the sentence imposed by the trial Court and as confirmed by the Court of First Appeal are sustainable under facts and in law? Whether the accused had made out valid and sufficient grounds for his acquittal?

4. <u>POINTS</u>:

4. (a) The case of the complainant as urged in the private complaint, in brief, are as follows: ‘The accused is the proprietor of Varada Sai Krishi Seva Kendra, Satara. The complainant is a registered partnership firm being represented by its Partner. The accused is having business dealings with the complainant firm for over past several years. The complainant firm is doing business in production and marketing of hybrid seeds. While so, the accused, who is a customer of the complainant firm and who is having business dealings over the past several years, is due in a sum of Rs.5,59,740.63 ps to the complainant firm as per the extract of the accounts of the complainant firm. Towards part payment of the said amount due, the accused had issued a cheque bearing No.516368 dated 15.07.2004 for Rs.50,000/- drawn on the Karad Urban Co-operative Bank Limited, Karad Branch, Satara, drawn in favour of the complainant. On the request of the accused, the complainant firm had presented the said cheque for collection to the State Bank of Mysore on 01.11.2004. The cheque was dishonoured by the

Karad Urban Co-operative Bank Limited and was returned with a memo on 09.11.2004 showing the reason for return as “Exceeds arrangement”. The State Bank of Mysore, Adoni in turn had returned the cheque to the complainant firm with a memo dated 13.11.2004. Therefore, the complainant firm had got issued notice dated 22.11.2004 to the accused calling upon the accused to pay the amount covered by the cheque within fifteen days of receipt of the said notice. The accused having received the said notice had issued a reply dated 10.12.2004 *inter alia* admitting the issuance of a cheque for Rs.50,000/-, but falsely stating that the subject cheque is a blank cheque and was issued as a security. The accused did not pay any amount covered by the returned cheque. The cheque was issued against the debt legally due and payable to the complainant, but the cheque was returned as no funds were arranged for honouring the cheque. Thus, the accused has cheated the complainant with ulterior motives and dishonest intentions. Hence, the accused is liable to be punished for the offence punishable under Section 138 read with 142 of the Act read with Section 420 of the IPC.’

4. **(b)** During the course of trial a partner of the complainant firm was examined as PW1 and exhibits P1 to P10 were exhibited. The accused was examined as RW1. No documents were marked on his side.

4. **(c)** Coming to the evidence, PW1, who is one of the partners of the complainant firm, had deposed in line with the pleading in the complaint case. He had filed an affidavit in lieu of his examination-in-chief. He had exhibited the firm registration certificate and the original partnership deed as exhibits P1 and P2, besides letter of authorization, exhibit P3, account extract, exhibit

P4, dishonoured cheque, exhibit P5, counter foil, exhibit P6, memo of Karad Urban Cooperative Bank Limited, exhibit P7, memo of State Bank of Mysore, exhibit P8, office copy of legal notice, exhibit P9 and reply notice, exhibit P10. He had maintained his stand in the cross-examination about the liability of the accused and the issuance of the dishonoured cheque towards part of the said liability and the dishonour of cheque when presented for collection and the maintenance of accounts (ledger book and day book with all details). It was elicited in his cross-examination that the accused sent DD for Rs.40,000/- on 31.07.2004 and that the same was credited towards the earlier dues and that on 18.10.2004, the accused had paid Rs.5,000/- in cash to them and the same was accepted. When it was suggested to him that Rs.40,000/- and Rs.5,000/- was paid by the accused and the same is to be adjusted towards the amounts due under the cheque, he had denied the said suggestion. He had asserted that the cheque was issued with the date 15.07.2004 and the same had bounced subsequently. He had denied the suggestion that the accused is not due in a sum of Rs.5 lakhs and that even after receipt of the amount, the case was foisted. Per contra, the accused had deposed that he does not owe Rs.5,59,740/- to the complainant and that he owed only Rs.50,000/- and that subsequently, he had paid by way of a DD Rs.40,000/- on 31.07.2004 and Rs.5,000/- on 18.10.2004 and that the said payments were made towards the amount due by him to the complainant and that he had instructed the complainant to adjust the payments towards the said amount and that therefore, he did not owe any amount other than Rs.50,000/- to the complainant and that the cheque was obtained as a security for the credit purchases made by him and that he did not commit any offence. Thus, the accused had admitted that he has given the cheque. He had also admitted the business transactions between him and the complainant. As already noted, exhibit P5 is the dishonoured cheque. The said cheque was presented for collection under exhibit P6. The cheque return memos of the respective banks are exhibits P7 and P8. The same on a perusal would show that the cheque was dishonoured for the reason 'exceeds arrangement'. Exhibit P4 is the account extract. In the reply notice under exhibit P10, it is categorically admitted that the cheque in question was issued, but it was stated that it was issued in the month of September 2003 as a security for the price of seeds purchased from the complainant and that the said cheque was misused. It is not pleaded in the reply notice that the said two payments, viz., Rs.40,000/- by way of D.D and Rs.5,000/-by way of cash were paid towards the cheque amount. This defence was developed in the cross-examination of PW1 and was maintained in the evidence of RW1. Thus, in the reply notice there is no plea to support the defence, which was sought to be advanced during the course of the evidence in the calendar case. Thus, as rightly held by the court below, the accused had failed to establish his defence to dislodge the well-established case of the complainant. 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 judgment of the court below calling for interference. The points are accordingly answered in favour of the complainant and against the accused.

4. **(d)** Coming to the quantum of sentence, considering the amount of cheque, this court is of the view that the sentence imposed is on the higher side and is not proportionate to the gravity of the offence, more particularly, in the light of the fact that the accused, at the time of hearing on his sentence, had stated that he is an aged and sickly person and sought mercy. The record shows that the accused is now aged about 70 years. Therefore, this court considers that the substantive sentence of imprisonment can be modified and reduced to one already undergone while maintaining the compensation amount with in default sentence as imposed by the trial court and confirmed by the court below.

5. In the result, the Criminal Revision Case is dismissed confirming the judgment of the court below in regard to the conviction of the accused. However, the substantive sentence of imprisonment is modified and is reduced from six months to the period already undergone while maintaining the compensation of Rs.50,000/- awarded to the complainant and the in default sentence of simple imprisonment for two months on failure to pay the said amount of compensation. If the compensation amount is not yet paid, the accused shall pay the said amount within two weeks from the date of receipt of a copy of this order. On the failure of the accused to do so, the trial Court shall take necessary steps for his apprehension and send him to prison for serving the in default sentence.

Miscellaneous petitions pending, if any, in this Criminal

Revision Case shall stand closed.

M.SEETHARAMA MURTI, J

19th January 2015
MVA