

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.833 of 2012

ORDER:

This Criminal Revision Case is directed against the judgment of the learned XII Additional District and Sessions Judge (Fast Track Court), Vijayawada, in CrI.A.No.199 of 2010 dated 07.05.2012, confirming the conviction and sentence, of imposing fine of Rs.1,30,000/-, and the default sentence was modified, to that of undergoing simple imprisonment for a period of six months, from that of undergoing rigorous imprisonment for a period of one year for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), imposed against the revision petitioner-accused by the learned III Additional Chief Metropolitan Magistrate, Vijayawada in C.C.No.894 of 2007 dated 27.10.2010.

For convenience sake, the parties hereinafter referred to as they were arrayed before the Trial Court.

It is the case of the prosecution that the accused borrowed an amount of Rs.90,000/- on 25.01.2005 from the complainant undertaking to repay the same with interest at 24% p.a. in the presence of PW.2. The accused is alleged to have issued a cheque on 22.03.2007 for Rs.1,25,000/- drawn on ICICI Bank, J.D.Hospital Road, Governorpet, Vijayawada, towards full and final settlement of debt and, when the said cheque was presented, the same was returned with an endorsement 'funds insufficient'. Pursuant to that, the complainant got issued a legal notice on 03.04.2007 informing about the dishonour of the cheque and demanding the accused to pay the amount covered under the cheque within 15 days. The accused failed to pay the amount and got issued a reply notice with false allegations. The complainant, therefore, filed a complaint against the accused for the offence under Section 138 of the Act.

The accused was examined by the learned III Additional Chief Metropolitan Magistrate, Vijayawada, under Section 251 Cr.P.C, and the accusation levelled against the accused was read over and explained to him for which he denied and pleaded not guilty and claimed to be tried. During the course of trial, the prosecution examined PWs.1 and 2 and got marked Exs.P.1

to P.9.

After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported no defence evidence on his behalf.

On a perusal of the entire evidence, both oral and documentary, the Trial Court found the accused guilty for the offence under Section 138 of the Act and imposed the fine of Rs.1,30,000/- in default to undergo rigorous imprisonment for one year.

In an appeal preferred by the revision petitioner-accused against the said conviction and sentence, the learned XII Additional District and Sessions Judge (Fast Track Court), Vijayawada, in CrI.A.No.199 of 2010 dated 07.05.2012, while confirming the conviction and sentence of imposing fine of Rs.1,30,000/-, modified the default sentence to that of undergoing simple imprisonment for a period of six months. Aggrieved by the same, the revision petitioner-accused preferred this criminal revision.

Learned Counsel for the revision petitioner contended that, since the debt is an oral debt, the complainant has not proved the existing liability and also failed to prove that it is a legally enforceable debt; and that no documentary evidence was filed by the complainant to prove the existence of debt. He further contended that both the Trial Court and the Appellate Court erroneously concluded that the cheque was given for a legally enforceable debt; that no documentary evidence was produced to prove that the complainant lent Rs.90,000/- to the accused; that in the absence of documentary proof, the oral evidence of PWs.1 and 2 cannot be taken into consideration; and finally prayed to set aside the judgments of both the Courts below.

Per contra, learned Counsel for the second respondent – accused contended that the accused borrowed the amount in the presence of PW.2 and, in discharge of the said debt, a cheque was issued which was dishonoured and, therefore, both the Courts below after recording concurrent finding that the debt is a legally enforceable debt, convicted the accused for the offence under Section 138 of the Act. It is further contended that the accused has not rebutted the presumption available under the Act; that the complainant proved the case

against the accused; and, therefore, prayed to dismiss the revision.

The point for consideration is whether the petitioner is entitled to set aside the judgment of the appellate Court in CrI.A.No.199 of 2010 dated 07.05.2012, as well as the judgment of the trial Court in C.C.No.894 of 2007 dated 27.10.2010?

Point:

A perusal of the record shows that PW.1, who is the complainant, deposed that, in the presence of PW.2, an independent witness, the accused borrowed an amount of Rs.90,000/- on 25.01.2005 promising to repay with interest at 24% p.a. and, when demanded, Ex.P.1, cheque for Rs.1,25,000/-, was issued towards full and final settlement which was returned with an endorsement 'insufficient funds', and, as such, Ex.P.3, legal notice was issued. In the cross-examination of PW.1, nothing has been elicited to disbelieve his evidence and Exs.P.1 to P.3. PW.2, in his evidence, supported the evidence of PW.1, and, in his cross-examination, nothing has been elicited to disprove the loan transaction.

A perusal of Ex.P.1 cheque reveals that the accused signed Ex.P.1 as the proprietor of Sri Harika Enterprises for Rs.1,25,000/- in favour of the complainant. The accused has not rebutted the presumption made under Section 139 of the Act and that no evidence was produced to discredit the testimony of PWs.1 and 2 regarding the nature of the transaction. Thus the petitioner failed to prove that there is no legally enforceable debt existing. Further, he failed to explain why he issued cheque, Ex.P.1, for Rs.1,25,000/- to the complainant. Thus, the evidence on record clearly establishes that there is a legally enforceable debt, for which the petitioner had issued Ex.P.1, cheque, and the same was dishonoured with an endorsement 'insufficient funds'. The evidence of PWs.1 and 2 is consistent and cogent to prove that the accused committed the offence under Section 138 of the Act. Both the Courts below gave a concurrent finding that there is existence of legally enforceable debt payable by the accused to the complainant. The findings recorded by both the Courts below do no warrant interference of this Court.

The Criminal Revision Case fails and is, accordingly, dismissed.

Miscellaneous petitions pending, if any, shall stand dismissed.

ANIS, J

Date:27.03.2015

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