

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.610 of 2005

ORDER:

This criminal revision case is preferred under Sections 397 and 401 of Code of Criminal Procedure (for short "Cr.P.C.") questioning the legality, propriety and regularity of the order dated 04.04.2005 passed in CrI.A.No.23 of 2005 by the Additional Metropolitan Sessions Judge for trial of Communal Offences – cum – VII Additional Metropolitan Sessions Judge, Hyderabad, whereby the conviction and sentence imposed by the XXIII Metropolitan Magistrate, Hyderabad in C.C.No.80 of 2000 was confirmed.

Petitioner No.1/accused No.1 is the company and the petitioner No.2/accused No.2 is its Managing Partner. Respondent No.1 filed a complaint against the petitioners for the offence punishable under Section 138 of Negotiable Instruments Act (for short "N.I.Act") alleging that the accused is a proprietary concern carrying on business of sale of pesticides at Nandyal, Kurnool District in the name and style of M/s. Sri Raghavendra Pesticides/accused No.1 represented by accused No.2. The accused purchased pesticides from complainant company and used to make payments against the supplies made by the complainant as per the account. The complainant company also having a sister concern by name Polla Agencies, which is a partnership firm represented by its partners. Both the companies supplied chemicals and

pesticides to the accused and Ex.P.5 is the statement of account confirming the amount of Rs.24,300/- to be payable by the accused to Polla Chemicals private limited and Ex.P.6 is the confirmation letter, according to which Rs.2,03,186/- was to be paid by the accused to Polla Agency. Both the letters were issued by Polla agency and confirmed by the accused company. Towards the supplies made by the Polla Agency and Polla Chemicals Private Limited, the accused issued a cheque bearing No.074107 for Rs.2,27,486/- drawn on Rayalaseema Grammena Bank, Nandyal branch, with Ex.P.7 covering letter. On presentation of the cheque, it was returned dishonoured stating that the account was closed by the drawer on 13.11.1999 and the same was informed to the complainant. Thereafter, the complainant issued notice under Section 138 of N.I.Act on 30.11.1999 and personally handed over to the accused. In spite of the notice issued by the complainant, the accused failed to pay the amount.

Upon securing the presence of the accused, the trial Court on compliance of Section 207 of Cr.P.C. framed charges against accused for the offence punishable under section 138 of Negotiable Instruments Act, read over and explained to them in Telugu, the accused pleaded not guilty and claimed to be tried.

During trial, P.W.1 was examined and marked Exs.P.1 to P.8.

After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. explaining incriminating material available against them, but they denied the same, and examined D.Ws.1 to 3 and marked Exs.D.1 to D.4 on behalf of the accused.

Upon hearing argument of both counsel, the trial Court found the accused guilty for the offence punishable under Section 138 of the N.I.Act, convicted and sentenced to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1,000/- in default of payment of fine, to suffer simple imprisonment for two months.

Aggrieved by the conviction and sentence passed by the trial Court, the petitioners/accused preferred an appeal No.23 of 2005 before the Sessions Court, and the same was dismissed, confirming the conviction and sentence passed by the trial Court. Aggrieved by the concurrent findings of both the Courts below, the present revision is preferred on various grounds.

The trial Court and the appellate Court failed to consider the contention that no notice was issued as required under Section 138 of the N.I.Act and the complainant failed to establish that the cheque was issued towards discharge of legally enforceable debt, but both the Courts below committed error in convicting the accused for the offence punishable under Section 138 of Negotiable Instruments Act.

When the matter reached, learned counsel for the petitioners did not appear and advance arguments, but this Court cannot dismiss the revision for default, however this Court can decide the revision on merits in view of the law declared in “**Nisha Sharma and others v. Vinod Kumar Sharma**¹” wherein it is made clear that the revision cannot be dismissed for default and even the petitioner or his/her advocate did not appear before the Court, the Court shall examine the record and decide the revision on merits.

Persuaded by the law declared by the Delhi High Court, I would like to decide this revision, perusing the record.

This revision is filed under Section 397 and 401 of Cr.P.C. Section 401 confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or apparent harshness of treatment which has on one hand resulted in some injury to the due maintenance of law and order or on the other hand, in some undeserved hardship to individuals. The revisional power conferred on the High Court by this section is discretionary power, has to be exercised in the aid of justice and this Court will not exercise jurisdiction under this Section if there has been no failure of justice even though the proceedings of the lower court suffer from irregularity or impropriety as held by

¹ 1990 Cri.L.J. NOC 57 (Delhi)

Apex Court in “***State of West Bengal v. Tulsidas***”². The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the purpose of relieving persons who have not had a fair trial or whose convictions have been arrived at by non-observance of material provisions of the law or by such mis-directions as must have occasioned a failure of justice as held in “***Prahlad v. Emporer***”³.

Further, the High Court can, in exercise of its revisional powers, either *suo motu* on the basis of its own knowledge derived from any source whatsoever, or on an application by a complainant, exercise the powers of an appellate Court both with respect to acquittal and conviction. This revisional power is subject to the following three limitations:

Firstly, no order can be made to the prejudice of the accused or other person unless he had an opportunity of being heard personally or by a pleader in his own defence;

Secondly, it cannot convert a finding of acquittal into one of conviction;

Thirdly, no revision can be entertained at the instance of a party who could have appealed under the Code and has not appealed.

² (1964) 1 Cr.L.J. 443 (SC)

³ 48, Cr.L.J 173, 174 (Pat)

Thus, the powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings recorded by the courts below. As a general rule, the High Court will not in revision, interfere with a finding of fact and this is specially so, where there are concurrent findings of facts of the lower Courts. But, in special and exceptional circumstances, the High Court is entitled to go into questions of fact and do justice, though the power should be rarely exercised, as held by Apex Court in “**S.P.S. Jayam & CO. v. Nehrusadan**”⁴.

In revision, the High Court usually accepts the findings on questions of facts recorded by a subordinate Court unless the finding is manifestly perverse or patently erroneous in view of the law declared by the Apex Court in “**Bansilal v.Laxman**”⁵.”

The only contention before this Court is that the petitioners did not comply with the requirement of issuance of notice under clause (b) of explanation to Section 138 of the N.I.Act i.e. demand of payment of amount covered by dishonoured cheque within the time prescribed under the Act. As seen from the material on record the cheque issued by the accused was dishonoured on 18.11.1999, letter was addressed, it is marked as Ex.P.8 on 28.11.1999 demanding the petitioners to pay the amount covered by the dishonoured cheque. But the petitioners did not pay the amount as demanded under Ex.P.8. On the other hand, it is contended

⁴ 1977 CrL.L.J. 1101

⁵ (1986) 3 SCC 445

that the complaint is liable to be dismissed due to non-compliance of proviso (b) to Section 138 of the N.I.Act. But this contention was not accepted by both the trial Court and the appellate Court having satisfied about compliance of clause (b) of explanation to Section 138 of N.I.Act recorded a specific finding that the complainant has complied with the requirement under proviso (b) to Section 138 of the N.I.Act. Therefore, this Court in the absence of any material illegality cannot reverse such concurrent fact findings recorded by both the Courts below.

Since the learned counsel for the petitioners did not appear before this Court to bring to the notice of this Court any perversity in the order of the Courts below, I find no material to interfere with the concurrent fact findings recorded by both the Courts below. Consequently, the revision is liable to be dismissed.

In the result, the criminal revision case is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

14.09.2017
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