THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2476 OF 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed questioning the legality, propriety and correctness of the judgment, dated 14.09.2017, in Criminal Appeal No.358 of 2016 passed by the V Additional Sessions Judge, SPSR Nellore District at Nellore, whereby the appellate Court confirmed the conviction recorded in Calendar Case No.22 of 2016 by the Principal Junior Civil Judge, Nellore, and modified the substantive sentence of imprisonment reducing Rigorous Imprisonment for 1½ years to Simple Imprisonment for six (06) months by confirming the fine amount.

2. Facts of the case, in brief, are that the petitioner herein is the accused, whereas the 1st respondent herein is the complainant before the trial Court. The 1st respondent filed the complaint against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'N.I. Act'), alleging that the petitioner borrowed an amount of Rs.4,50,000/- for her family necessities on 30.12.2012 and executed a promissory note on the even date agreeing to repay the same within six (06) weeks together with interest @24% per annum. But, she did not pay at least monthly interest as agreed and issued a cheque bearing No.492455 for Rs.4,50,000/- on 07.01.2014 towards principal amount due under the promissory note drawn on State Bank of

India, Vedayapalem Branch, Nellore. On its presentation for collection, the cheque was dishonoured due to 'insufficient funds' and the same was returned with a cheque return memo and thereafter, a notice in compliance of Clause (b) of proviso to Section 138 N.I. Act was issued on 08.01.2014, calling upon the petitioner to pay the amount covered by the dishonoured cheque. The receipt of the same was acknowledged by the petitioner, but neither she paid the amount nor issued any reply. Hence the complaint.

3. The case was taken on file against the petitioner for the offence punishable under Section 138 read with 142 N.I. Act. On appearance of the petitioner, following necessary procedure under Section 207 Cr.P.C., the petitioner was examined under Section 251 Cr.P.C., explaining the substance of accusation levelled against her, for which she pleaded not guilty and claimed to be tried.

4. During trial, on behalf of the 1st respondent/complainant, PWs.1 and 2 were examined and got marked Exs.P.1 to P.5. After closure of the complainant's evidence, the petitioner was examined under Section 313 Cr.P.C., explaining the incriminating material appeared against her, she denied the same and reported no evidence.

5. Upon hearing argument of both the counsel, the trial Court found the accused guilty for the offence punishable under Section 138 read with 142 N.I. Act, convicted and sentenced her to undergo

Rigorous Imprisonment for a period of 1½ years and to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for a period of three (03) months.

6. Aggrieved by the judgment of the trial Court, conviction and sentence passed thereunder, the petitioner preferred Criminal Appeal No.358 of 2016 before the V Additional Sessions Judge, Nellore and the same was dismissed by the appellate Court vide its judgment, dated 24.09.2017, confirming the conviction, however, reduced the substantive sentence of Rigorous Imprisonment of 1 ½ years to Simple Imprisonment of six (06) months. Dissatisfied with the same, the present Criminal Revision Case is filed on various grounds.

7. The main contention before this Court is that the petitioner is a woman, who has to maintain two children; that the promissory note and the cheque were executed as security for payment of debt due by the third party, who already discharged the debt; the promissory note and the blank signed cheque were obtained by the complainant and misused those two documents and filed the present complaint before the trial Court for the offence punishable under Section 138 read with 142 N.I. Act; the petitioner is not liable to pay any amount as the cheque was not issued towards discharge of legally enforceable debt or liability, but both the Courts below committed an error in finding the petitioner guilty for the offence

punishable under Section 138 read with 142 N.I. Act and convicted and sentenced him as stated above.

8. During hearing, Sri M.Subba Reddy, learned counsel for the petitioner, reiterated the contentions and mostly demonstrated that promissory note was executed only as a security for payment of the debt due by third party and the complainant obtained a blank signed cheque from the petitioner as a security for the due payment of the amount, therefore, the cheque was not issued in lieu of discharge of legally enforceable debt, consequently, the petitioner is liable to be acquitted for the offence punishable under Section 138 read with 142 N.I. Act.

9. The Scope of revision under Sections 397 and 401 Cr.P.C., is limited and the High Court may exercise such power only when there is a manifest perversity in the order or the finding recorded by the Court below is without any evidence or material, though section 401 of Cr.P.C. 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 or procedure, neglect or failure to take proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be

exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case. The discretion conferred on the High Court by Section 401 of Cr.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court.

10. In view of limited jurisdiction conferred on this Court, unless the Court finds that there is a manifest perversity, apparent error in the concurrent fact findings recorded by the Courts below, this Court cannot interfere with the fact findings recorded by the Courts below.

11. Here the contention of the petitioner is that she executed the promissory note and issued blank signed cheque to the complainant as security for payment of debt due by the third party, who already paid amount. This question is purely a question of fact. Both the trial Court and the appellate Court disbelieved the contention of the petitioner. Even otherwise when the blank signed cheque and the promissory note were issued by the petitioner, they are incohated documents under Section 20 of N.I.Act. Section 20 N.I.Act authorizes the person, the holder of the negotiable instrument, to fill the blanks and use the document either the name of holder or in the name of anybody. A similar question came up for consideration

before this Court in Duggineni Seshagiri Rao Vs. Kothapalli Venkateswara Rao[1], wherein at paragraph No.6, held as follows:

> "Four things are necessary for an instrument to be a promissory note: 1) It should be in writing; 2) It should have an unconditional undertaking; 3) It should be signed by the maker; and 4) it should be in favour of certain person or to a bearer.
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> Section 20 makes inchoate stamped instruments legal instruments. The dictionary meaning of 'inchoate' is 'incomplete'. So, incomplete stamped instruments are as good as the instruments mentioned in Section 4 of the Act. Even if one looks to the definition of the 'promissory note' under Section 4, one would find that the requirements for making an instrument a promissory note do not contain the requirement of naming a person, it can be given in favour of a certain person or to bearer of the instrument. That makes it clear that, one who is holding the document is the person who derives rights out of that instrument. In other words, it would mean that the document with first three requirements as stated above, should be delivered to the payee, once it is delivered it becomes a promissory note. Name and other particulars can be filled up even at a later stage. When one reads Section 4 in conjunction with Sections 20 and 42 that is the only interpretation that can be placed on the meaning of 'promissory note' under Section 4 of the Act. Section 20 lays down that when a person signs and delivers to another person a paper stamped in accordance with law relating to negotiable instrument it becomes a negotiable instrument even if it is wholly blank or written with incomplete particulars. Similarly, Section 42 even recognizes instrument issued in the name of fictitious person to be a valid instrument. Although Section 42 relates to bills but it also accepts that an acceptor of a bill of exchange even if it was in drawn in a fictitious name it would create a genuine claim

[1] 2001(6) ALT 95 (D.B.)

in favour of the holder. Therefore, even if a negotiable instrument is incomplete it would be a legal instrument provided it satisfies the first three conditions.

Holder of the instrument becomes a bearer of the instrument."

It is also further held as follows:

"The plaintiff had been able to prove the execution of the document. On the other had, if the document was disputed or doubted the onus was on the defendant to show that the document was a forgery because a presumption is in favour of plaintiff under Section 118 of the Negotiable Instruments Act."

Karnataka High Court in unreported judgment in H.Maregowda and etc. Vs. Thippamma and others (C.R.P.Nos.1574, 1590 and 1591 of 1995) and the Punjab and Haryana High Court in Sukhminder Singh Vs. Nirbhai Singh[2], took the similar view.

12. In view of the law declared consistently in three judgments referred supra, obtaining blank signed cheque and a promissory note is not a ground to set aside the conviction and sentence, since the holder of the document i.e., cheque, is entitled to fill the document and utilize the same for the appropriate purpose. Therefore, on this ground, this Court cannot set aside the conviction and sentence.

13. Yet another contention of the learned counsel for the petitioner is that these documents were executed as security for

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[2] AIR 2013 Punjab and Haryana 77

debt due by the third party. Even if the cheque was issued as security, it is valid in view of Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.[3] As per the principle laid down in the above judgment, the initial onus of proof is on the petitioner/accused to prove that the cheque was not issued in lieu of legally enforceable debt or liability. Therefore, the petitioner may rebut the presumption under Section 139 N.I., either by eliciting something in the cross-examination of complainant's evidence or by examining any independent witness. In the present facts of the case, nothing was elicited in the evidence of PWs.1 and 2 to rebut or dispel the presumption contained under Section 139 N.I. Act. In view of consistent testimony of PWs.1 and 2, the concurrent findings of the Courts below warrants no interference of this Court, as this Court finds no manifest perversity or apparent error, while exercising the power under Sections 397 and 401 I.P.C.

14. In view of the law declared by the Courts referred supra and the facts of the present case, and the defence of the petitioner, I am unable to reverse or set aside the conviction and sentence passed by the trial Court and confirmed by the appellate Court reducing the substantive sentence of Rigorous Imprisonment for 1 ½ years to Simple Imprisonment for six (06) months, while exercising the jurisdiction under Sections 397 and 401 I.P.C.

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[3] AIR 2016 Supreme Court 4363

15. Hence, the Criminal Revision Case is devoid of merit and the same deserves to be dismissed.

16. Accordingly, the Criminal Revision Case is dismissed at the stage of admission itself. Consequently, Miscellaneous Petitions, if any, pending in this revision case shall stand closed.

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M.SATYANARAYANA MURTHY,J

Date:19.09.2017
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