THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1616 of 2005

ORDER:

This revision is preferred under Sections 397 and 401 of Code of Criminal Procedure (fort short "Cr.P.C.") questioning the legality, propriety and regularity of the order dated 16.05.2005 passed in Crl.A.No.76 of 2002 by the VII Additional District and Sessions Judge (Fast Track Court) Krishna at Vijayawada, whereby the conviction and sentence imposed by VIII Metropolitan Magistrate, Vijayawada in C.C.No.218 of 2001 was confirmed.

The case of the complainant herein is that the petitioner/accused borrowed an amount of Rs.80,000/- on 23.02.1998 from the complainant for his family necessities and executed a promissory note agreeing to repay the same with interest at 24% p.a. either to the complainant or her order on demand. On several demands made by the complainant, the accused issued a cheque bearing No.264959 dated 04.01.2000, Ex.P.2, for Rs.60,000/- towards part payment of the said promissory note debt. The complainant presented the said cheque for collection on 01.02.2000, but the same was returned unpaid with an endorsement "funds insufficient" along with memo, Ex.P.3. Then the complainant got issued a legal notice, Ex.P.4 to the accused on 05.02.2000 informing about the dishonour of the cheque and demanded to pay the cheque amount, by way of registered post and also

certificate of posting. Though the accused received the notice under Ex.P.5 did not comply with the demand made in the notice.

The complaint was taken on file for the offence punishable under Section 138 of Negotiable Instruments Act (for short "N.I.Act").

On appearance of the accused, trial Court examined him under Section 251 of Cr.P.C., but he pleaded not guilty, claimed to be tried. On behalf of the respondent herein, P.Ws.1 to 3 were examined and Exs.P.1 to P.7 were marked and Exs.C.1 and C.2 were marked through Court.

After closure of the complainant's evidence, the accused was examined under Section 313 of Cr.P.C. explaining the incriminating material available against him, but he denied the same and reported no defence.

Upon hearing argument of both counsel, the trial Court found the accused guilty for the offence punishable under Section 138 of N.I.Act and convicted and sentenced him to undergo simple imprisonment for a period of 6 months and to pay fine of Rs.1,000/- in default, to undergo simple imprisonment for a period of one month.

Aggrieved by the said conviction and sentence passed by the trail Court, the petitioner/accused preferred an appeal No.76 of 2002 before the Sessions Court, and the same was dismissed by the judgment dated 16.05.2005 confirming the conviction and sentence imposed by the trial Court.

The only contention before this Court is that the cheque was issued towards discharge of decreetal debt and that there was a compromise between the parties after passing judgment by the trial Court and before the hearing of the appeal; that is the reason for non-appearance of parties before the appellate Court.

Therefore, in view of the compromise the petitioner is not required to pay any amount and the sentence imposed by the trial Court is liable to be set aside finding him not guilty since the petitioner discharged his debt covered by promissory note and cheque.

Learned counsel for the petitioner drawn the attention of this Court to the observations made by the appellate Court in paragraph No.5 of its judgment. On the strength of these observations, it is contended that due to compromise the parties did not appear before the Sessions Judge, but the Sessions Judge disposed of the appeal on merits and prayed to set aside the findings recorded by both the Courts below.

This revision 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 Apex Court in "***State of West Bengal v. Tulsidas***[1]**".** 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***[2]**".** 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;

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[1] (1964) 1 Crl.L.J. 443 (SC)
[2] 48, Crl.LJ 173, 174 (Pat)

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.

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***[3].

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**[4]."

The main contention before this Court is that there was a compromise between the parties after disposal of C.C.No.218 of 2001.

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[3] 1977 Crl.L.J. 1101
[4] (1986) 3 SCC 445

If really, the matter was compromised between the parties, unless the compromise is recorded after following necessary procedure under Section 320 of Cr.P.C. the appellate Court is not supposed to record such finding while deciding the appeal. But, no such petition was filed under Section 320 of Cr.P.C. to record compromise by appearing both parties before the Court. Both parties remained absent despite recording conviction of the petitioner – accused for the offence punishable under Section 138 of N.I.Act and sentenced him to undergo simple imprisonment for a period of six months and to pay fine of Rs.1,000/-. When the appeal is filed, it is for the petitioner-accused to appear and get the compromise recorded by filing necessary application before the Court, when no such procedure was adopted and get the compromise recorded, it is difficult to accept the contention of the learned counsel for the petitioner that due to compromise parties did not appear before the Court. Hence, I find no force in the said contention of the learned counsel for the petitioner, on the strength of the same; the finding of the trial Court cannot be reversed.

Coming to the facts of the case, the petitioner admittedly borrowed an amount of Rs.80,000/- on 23.02.1998 on execution of promissory note agreeing to repay the same. He also admitted issuance of cheque for Rs.60,000/- towards part-payment of the said promissory note debt, but the same was dishonoured on the

ground that there was no sufficient fund to the credit of petitioner-accused.

In the entire cross-examination of P.Ws.1 to 3, nothing was elicited to disbelieve the case of the complainant. Therefore, from the un-rebutted testimony of P.Ws.1 to 3, the complainant established that the cheque was issued towards discharge of legally enforceable debt or liability and also established that the petitioner failed to pay the amount covered by cheque on account of its dishonour after receiving notice, Ex.P.4. No explanation was offered in his examination under Section 313 Cr.P.C. On the other hand, there is a presumption under Section 139 of N.I.Act that the cheque was issued towards discharge of legally enforceable debt until contrary is proved. Though the presumption was rebuttable, nothing was elicited in the cross-examination of P.Ws.1 to 3 to rebut the presumption or did not examine any witness on his behalf to rebut the said presumption.

Therefore, taking into consideration of the facts and circumstances of the case, the trial Court found the accused guilty for the offence punishable under Section 138 of Negotiable Instruments Act, but even in the appeal also there were no merits and the same was dismissed.

Now, it is contended that the cheque was issued towards discharge of decree debt in O.S.No.153 of 2001, but this contention is not based on any material and in fact Ex.P.2 cheque was issued on 04.01.2000, whereas the suit in

O.S.No.153 of 2001 was filed subsequent to it. As the cheque was issued in the year 2000, the question of issuing the same towards decreetal amount is unbelievable. Even after notice, the petitioner – accused did not pay the amount covered by dishonoured cheque within 15 days at least. If he paid such amount at least before the trial Court or appellate Court the Court would have taken a lenient view. If the sentence imposed by the trial Court is reduced, it would amount to imposing flee-bite sentence, which is impermissible and it will not commensurate with the seriousness and gravity of the offence as held by the Apex Court in "***Suganthi Suresh Kumar v. Jagdeeshan***[5]"

Hence, I find no ground to reduce the substantive sentence imposed by the trial Court and the revision is devoid of any merits. Consequently, the revision case is liable to be dismissed.

In the result, the revision is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

10.08.2017
Ksp

[5] AIR 2002 SC 681