

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1468 OF 2017

ORDER:

This criminal revision is filed under Sections 397 and 401 of Cr.P.C. questioning the propriety, legality and correctness of the judgment dated 21.04.2017 in CrI.A.No.39 of 2016 passed by the X Additional District and Sessions Judge, Anakapalle, Visakhapatnam District confirming the acquittal of the accused finding him not guilty for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'the Act').

The petitioner filed a complaint against the respondent/accused for the offence punishable under Section 138 of the Act alleging that the accused issued a cheque bearing No.027426, dated 19.05.2008 drawn on ICICI Bank, Waltair branch for Rs.5 lakhs to pay the amount due to the complainant and the same was presented in SBI, Lankelapalem for collection on 01.09.2008 and it was dishonoured on the ground of "insufficient funds". The same was intimated to the accused, but the accused failed to pay the cheque amount. Then, the complainant got issued a legal notice dated 24.09.2008 calling upon the accused to pay the amount covered by the cheque and receipt of the same was acknowledged by the accused. Though notice was received, the accused failed to pay the cheque amount, thus committed an offence punishable under Section 138 of the Act.

The complaint was taken on file against the accused for the offence punishable under Section 138 of the Act and after securing the presence of the accused, complied the procedure under Section 207 Cr.PC., examined the accused under Section 251 Cr.P.C.,

explained the gist of accusation for the offence punishable under Section 138 of the Act, he denied the same and claimed to be tried.

During trial, on behalf of the complainant, PWs.1 to 5 were examined and Exs.P1 to P7 were marked and after closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C. explaining the incriminating circumstances that appeared against him, he denied the same and reported no defence.

Upon hearing argument of both the counsel, the trial Court found the accused not guilty, as there was no legally enforceable debt and the cheque was not issued in lieu of the discharge of the whole or part of the legally enforceable debt or other liability and dismissed the complaint.

Aggrieved by the dismissal of the complaint, acquitting the respondent for the offence punishable under Section 138 of the Act, the petitioner/complainant preferred an appeal before X Additional District and Sessions Judge, Visakhapatnam at Anakapalle in CrI.A.No.39 of 2016 which ended in dismissal by judgment dated 21.04.2017 confirming the acquittal of the respondent/accused for the offence punishable under Section 138 of the Act.

The present revision is filed assailing the judgment on the ground that the trial Court and the appellate Court did not consider the endorsement marked as Ex.P7 on Ex.P6 which established that Ex.P1 cheque was issued in lieu of discharge of the debt due to son of the complainant but the cheque was issued in the name of father of the mortgagee. Therefore, the cheque was issued towards discharge of the legally enforceable debt covered by

Ex.P7 but both the Courts below did not consider the evidence on record in proper perspective and committed an error in dismissing the complaint, acquitting the accused for the offence punishable under Section 138 of the Act.

During hearing, K.L.N.Swami, learned counsel for the petitioner contended that the respondent borrowed Rs.5 lakhs from the son of the complainant and executed a registered mortgage deed in favour of son of the petitioner/complainant and later the respondent/accused issued a cheque towards discharge of the debt due to the son of the complainant/petitioner. Ex.P6 is the mortgage deed and Ex.P7 is the endorsement thereon evidencing issue of cheque towards the discharge of the debt covered by Ex.P6 by issuing Ex.P1. The trial Court and the Appellate Court did not consider the evidence on record in proper perspective and committed a grave error in acquitting the accused for the offence punishable under Section 138 of the Act.

It is an undisputed fact that the respondent/accused borrowed Rs.5 lakhs from the son of the complainant and executed a registered mortgage deed Ex.P6. By virtue of execution of Ex.P6 the relationship of mortgagee and mortgagor was subsisting between son of the complainant and the accused/respondent herein, but the respondent issued Ex.P1 cheque in the name of the complainant towards discharge of the debt due under the mortgage deed making an endorsement marked as Ex.P7. Issue of a cheque in favour of the complainant, father of the mortgagee, would not create a relationship of creditor and debtor and unless the cheque was issued towards discharge of the legally enforceable debt or liability, its dishonour on its presentation for collection by payee

bank would not constitute an offence punishable under Section 138 of the Act. Here, it is not the case that the blank cheque was issued but a cheque was issued in the name of complainant towards discharge of the debt due to the son of the complainant as per endorsement marked as Ex.P7 on the reverse of Ex.P6 mortgage deed. At best, there exists the relationship of mortgagee and mortgagor between son of the complainant and the respondent/accused by the date of issuing Ex.P1 cheque. The debt was not transferred in favour of his father complainant by son and therefore, issue of cheque in favour of the father towards discharge of the mortgage debt due to the son of the complainant would not create a relationship of creditor and debtor between the complainant and respondent. Therefore, issue of cheque in favour of the complainant is not towards discharge of legally enforceable debt due to him. Therefore, dismissal of the complaint by the trial Court as confirmed by the appellate Court is in accordance with law since the presumption under Section 139 of the Act is dispelled by the respondent/accused based on Exs.P6 and P7 and admissions in the evidence of P.W.1. Consequently, I find no merit in the criminal revision case and it is liable to be dismissed.

In the result, the Criminal Revision Case is dismissed.

Miscellaneous petitions, pending if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 08.09.2017

ssp