

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.1529 of 2006

ORDER:

This criminal revision case is filed under Sections 397 and 401 Cr.P.C. challenging the judgment dated 08.09.2006 passed in Crl.A.No.122 of 2006 by the Principal Sessions Judge, West Godavari District, Eluru confirming the judgment dated 30.06.2006 in C.C.No.406 of 2005 passed by the Special Judicial Magistrate of I Class (Excise), West Godavari District, Eluru, against the petitioner finding him guilty for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'the Act') and sentencing him to undergo imprisonment for six months.

2. The case of the complainant is that the petitioner borrowed a sum of Rs.2,00,000/- on 03.07.2002 agreeing to repay the same with interest @ 24% per annum executing a promissory note/Ex.P.1. Since the petitioner did not repay the said amount, on insisting, the petitioner issued a cheque/Ex.P.2 for Rs.1,00,000/- towards part payment on 29.12.2004. When the complainant presented the said cheque for collection, the same was returned on 31.12.2004 along with memo/Ex.P.3 with an endorsement 'insufficient funds'. Therefore, the complainant issued legal notice/Ex.P.4 on 03.01.2005. The accused having received the legal notice on 04.01.2005 neither paid the cheque amount nor issued any reply notice. Thus, the accused committed an offence punishable under Section 138 of the Act.

3. The complaint was taken on file against the petitioner for the offence punishable under Section 138 of the Act and upon securing the presence of the petitioner/accused, complied with the procedure under Section 207 Cr.PC., examined the petitioner/accused under Section 251 Cr.P.C., explained the gist of accusation for the offence punishable under Section 138 of Act, he pleaded not guilty and claimed to be tried.

4. During trial, on behalf of the complainant PWs.1 and 2 were examined and marked Exs.P.1 to P.5 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 in the testimony of complainant witnesses, he examined DWs.1 and 2 and marked Exs.B.1 and B.2.

5. Upon hearing argument of both the counsel, the trial Court found the accused guilty for the offence punishable under Section 138 of the Act, convicted and sentenced him to undergo imprisonment for a period of six months.

6. Aggrieved by the conviction, sentence confirmed by and sentence under impugned calendar judgment, the petitioner preferred an appeal in CrI.A.No.122 of 2006 which was ended in dismissal by judgment dated 08.09.2006 confirming the conviction and sentence passed by the trial Court under impugned calendar judgment.

7. Aggrieved by the conviction and judgment of the appellate Court in CrI.A.No.122 of 2006, the present revision case is filed mainly on the ground that the material on record is not sufficient to establish the ingredients of offence punishable under Section 138 of the Act and finding the petitioner guilty based on solitary testimony of PW.1 is erroneous and recording conviction of the petitioner/accused based on presumptions is an illegality and prayed to set aside the conviction and sentences passed against him and dismiss the calendar case while allowing the criminal revision case.

8. Learned counsel for the petitioner did not appear and advance any arguments, but this Court cannot dismiss the revision case. However, this Court can decide the revision case verifying the material available on record, since the scope of jurisdiction is limited under Sections 397 and 401 Cr.P.C.

9. As per the decision in ***Misha Sharma and others v. Vinod Kumar Sharma***¹ the criminal case cannot be dismissed for default, but this Court can decide the revision on merits without waiting for counsel or the petitioner.

10. Persuaded by the law declared by the Delhi High Court, I would like to decide the present revision case verifying the available material.

11. The consistent case of the complainant is that the petitioner borrowed Rs.2 lakhs under Ex.P.1-promissory note and issued

¹ 1990 Cri.L.J. NOC 57 (Delhi)

Ex.P.2-cheque for Rs.1,00,000/- and on its presentation, it was dishonoured vide Ex.P.3-cheque return memo issued by ICICI Bank. The complainant issued Ex.P.4-legal notice. Though, the accused received the said legal notice, failed to pay the amount covered by the cheque.

12. To substantiate the contention of the petitioner, he himself examined as DW.2 besides examining M.Jahangeer as DW.1 and K.Vijay as DW.3. PW.1 is the complainant. The testimony of PWs.1 and 2 is consistent to the effect that the petitioner/accused borrowed Rs.2 lakhs by executing promissory note and that the cheque issued by him was dishonoured; that he issued notice and failure to pay the cheque amount within the time prescribed would amount to offence punishable under Section 138 of the Act. DW.2 in his evidence admitted that he know PW.1 through the owner of a mechanic shed near Srinivasa theatre and he stood as surety to PW.1 and his brother in Sriram Chits for payment of prize amount and that there is no legally enforceable debt against him in favour of PW.1. But this contention cannot be accepted since the petitioner issued a cheque. If really he stood as surety for the complainant/PW.1, question of issuing any cheque in his favour does not arise. Therefore, on the strength of his evidence, it is difficult to hold that the cheque was not issued towards discharge of legally enforceable debt.

13. DW.1 is the Branch Manager of the ICICI Bank Ltd. Eluru and according to his evidence, except Ex.P.2-cheque transaction

covered by Ex.P.1, there was no other cheque transactions in the account and no cheque was bounced other than Ex.P.2.

14. DW.3 is the Manager of the Karur Vysya Bank, Eluru and he produced copy of S.B. Account No.2487 belonging to Ali Khan, Moosnur Hussain, K.Anamulla Khan Ameer and Ali Khan. These are all of no use to substantiate the contention of the petitioner.

15. When execution of promissory note-Ex.P.1 and issuance of Ex.P.2-cheque was proved, the burden shifts to the petitioner to dispel the presumption under Sections 118 and 139 of the Act and until the presumption is dispelled, the Court shall presume that Ex.P.1-promissory note is supported by consideration and Ex.P.2-cheque was issued in lieu of discharge of legally enforceable debt. Here, the petitioner failed to dispel or rebut the statutory presumption under Sections 118 and 139 of the Act either by eliciting anything in the cross examination of PW.1 or by examining any independent witness. Therefore, based on statutory presumption, the trial Court and appellate Court recorded a concurrent fact finding and this Court cannot interfere with the same while exercising power under Sections 397 and 401 Cr.P.C.

16. The other contention raised by the learned counsel for the petitioner is that the evidence on record is not sufficient to constitute the offence punishable under Section 138 of the Act as discussed in the earlier paras. Ex.P.2-cheque was issued in lieu of discharge of legally enforceable debt covered by Ex.P.1 and on its dishonour along with cheque return memo-Ex.P.3, Ex.P.4-notice was issued calling upon the petitioner to pay the amount covered

by dishonoured cheque within 15 days, but he failed to pay the amount covered by dishonoured cheque. Consequently, the evidence on record establishes the ingredients of offence punishable under Section 138 of the Act.

17. Finally, it is contended in the grounds of revision that based on sole testimony of PW.1, the trial Court convicted the accused and sentenced him to undergo simple imprisonment and the same is erroneous.

18. The offence punishable under Section 138 of the Act is based mostly on documentary evidence and the same is proved by examining complainant himself as PW.1. The evidence of PW.1, if inspires confidence it is sufficient and no corroboration is required to prove the offence punishable under Section 138 of the Act like any other offence punishable under I.P.C. Therefore, I find no merit in this contention.

19. In view of my foregoing discussion, I find no ground to interfere with the concurrent fact finding of both Courts below and consequently, the criminal revision case is liable to be dismissed.

20. Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 05.10.2017
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