

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1970 of 2016

ORDER:-

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973 ('the Code', for brevity), is filed by the petitioner/accused, challenging the judgment, dated 09.05.2016, passed in Criminal Appeal No.378 of 2014 by the IV Additional Metropolitan Sessions Judge at L.B.Nagar, Ranga Reddy District, whereby, the conviction and sentence imposed against the petitioner/accused by the V Special Magistrate, Hasthinapuram, Ranga Reddy District, by order, dated 09.05.2014, in C.C.No.207 of 2013 finding the petitioner guilty for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, ('N.I.Act', for brevity) and sentencing him to undergo simple imprisonment for six months and to pay fine of Rs.90,000/-, in default, to undergo simple imprisonment for three months, was confirmed.

2. The petitioner is the accused in C.C.No.207 of 2013 and the appellant in Criminal Appeal No.378 of 2014. He filed this Criminal Revision Case, aggrieved by the conviction and sentence imposed by the trial Court, on various grounds, mainly on the ground that the cheque was not issued towards the discharge of the legally enforceable debt or liability, but the trial Court, without taking into consideration the material contradictions and the omissions in the complainant/1st respondent's, committed an error in finding the petitioner guilty for the offence punishable under Section 138 of the N.I.Act; and, the appellate Court, being the final Court of

question of facts, passed the impugned judgment without discussing the evidence on record and thus committed an error. He thus prayed this Court to set aside the conviction and sentence passed by the trial Court, as affirmed by the appellate Court, while dismissing the complainant.

3. Though the matter reached for admission, Sri A.Jaya Prasad, learned counsel for the petitioner/accused did not appear and advance any argument. However, this Court cannot dismiss the Criminal Revision Case for default, but without waiting for the counsel for the petitioner, this Court can verify the material on record and pass appropriate orders, in view of the law declared by the Delhi High Court in Misha Sharma Vs. Vinod Kumar Sharma¹. Persuaded by the law declared by the Delhi High Court, I would like to verify the material on record and decide the appeal in accordance with the law.

4. The complainant/1st respondent filed a complaint under Section 138 of the N.I.Act against the petitioner herein/accused alleging that the petitioner approached him for financial help and, accordingly, he advanced Rs.80,000/- as 'hand loan' to the petitioner who promised to repay the same within three months. When the 1st respondent demanded the petitioner for payment of the amount, the petitioner issued a cheque bearing No.370970, dated 03.08.2013, for Rs.90,000/- drawn on Central Bank of India, Khairatabad Branch, Hyderabad, towards discharge of the debt (hand loan). On its presentation by the 1st respondent for

¹ 1990 Cr.LJ. (NOC) 57 (Del)

collection, the said cheque was dishonoured and was returned along with a cheque return memo, dated 06.08.2013. Then the 1st respondent got issued a legal notice to the petitioner demanding to repay the amount covered by the dishonoured cheque. Though the said legal notice was received by the petitioner, she neither gave reply to the said notice nor paid the amount covered by the dishonoured cheque. Hence, the 1st respondent/complainant lodged a complaint against the petitioner/accused for the offence punishable under Section 138 of the N.I.Act. After completion of investigation, police filed charge sheet before the Magistrate, who in turn took the case on file.

5. On securing the presence of the accused, the accused was examined under Section 251 Cr.P.C. explaining the gist of accusation for the offence punishable under Section 138 of the N.I.Act. She pleaded not guilty and claimed to be tried.

6. During trial, on behalf of prosecution, the complainant himself was examined as P.W.1 and Exs.P.1 to P.6 were marked. After closure of prosecution evidence, the petitioner/accused was examined under Section 313 Cr.P.C. explaining the incriminating material that appeared against her in the testimony of prosecution witnesses. The petitioner/accused denied the same. The petitioner/accused got herself examined as D.W.1 and marked Exs.D.1 to D.4.

7. Upon hearing both the counsel, the trial Court found the petitioner/accused guilty for the offence punishable under Section 138 of the N.I.Act and sentenced her to undergo simple imprisonment for six months and to pay fine of Rs.90,000/-, in

default, to undergo simple imprisonment for three months. Aggrieved by the conviction and sentence passed by the trial Court, the accused preferred an appeal in Criminal Appeal No.378 of 2014 before IV Additional Metropolitan Sessions Judge, L.B.Nagar, Ranga Reddy District, which ended in dismissal by Calendar and Judgment dated 09.05.2016, confirming the conviction and sentence imposed by the trial Court.

8. In this Criminal Revision Case, though no argument was advanced, the petitioner raised a ground in the grounds of the Revision Case that the cheque was not issued towards discharge of legally enforceable debt or liability. Ex.P.1 is the cheque bearing No.370970, dated 03.08.2013, for Rs.80,000/- drawn on Central Bank of India, Khairatabad Branch, Hyderabad. Ex.P.2 is the cheque return memo, dated 06.08.2013. Ex.D.1 is the cheque book issued by the Central Bank of India to the petitioner/accused. This is a serious question of fact to be decided by the trial Court and, accordingly, the trial Court, after considering the material available on record, recorded its finding that the cheque was undisputedly returned with the endorsement 'no such account' to the payee bank along with the cheque return memo, dated 06.08.2013, and the said finding was affirmed by the appellate Court in the appeal. Therefore, the said fact finding concurrently recorded by the Courts below cannot be interfered by this Court while exercising jurisdiction under Sections 397 & 401 of the Code in view of the limited scope of jurisdiction conferred on this Court. Therefore, the said ground is not sufficient to set aside the

conviction and sentence recorded against the petitioner/accused by both the Courts below.

9. The other ground urged is that there are material contradictions and omissions in the evidence of the complainant and that the appellate Court did not discuss and evaluate the evidence in proper perspective, but confirmed the conviction and sentence imposed against the petitioner/accused and therefore, the impugned judgment is erroneous.

10. As seen from the material on record, the appellate Court framed a point for consideration in the appeal and discussed the evidence on record and ultimately concurred with the findings recorded by the trial Court with regard to the issuance of the cheque towards the discharge of the legally enforceable debt or liability and its dishonour by the payee bank with the endorsement 'no such account'. The concurrent findings recorded by both the Courts below on this aspect cannot be interfered by this Court in view of the limited scope of jurisdiction conferred on this Court under Sections 397 & 401 of the Code. Moreover, no such material contradictions or omissions are brought to the notice of this Court, except raising a bald plea in ground No.4 in the grounds of Revision. Therefore, on mere raising a ground in the grounds of Revision, this Court need not look into each and every line in the evidence recorded by the trial Court and come to an independent conclusion in the absence of pointing out any material contradictions and omissions in the evidence of the complainant's witness. Therefore, this is also not a ground to set aside the

conviction and sentence recorded against the petitioner/accused by both the Courts below.

11. Finally it is urged in the grounds of Revision that the pronouncement of judgment by the lower appellate Court is without application of mind is illegal. No doubt, the trial Court discussed the entire material available on record and concluded that the petitioner committed an offence punishable under Section 138 of the N.I.Act and the lower appellate Court affirmed it while answering the points formulated by it in the appeal by giving its specific reasons for recording concurrent findings. In view of the law declared in *Nopany Investments (P) Ltd. Vs. Santokh Singh*², wherein, the Apex Court considered the necessity of recording reasons in the first appeal and held that in case of reversal of first appeal, the Court ought to give some reasons for reversal of the findings, whereas, for the confirmation, the appellate Court need not record reasons. Even otherwise, if it is proved by the complainant that the cheque was issued or such a fact is admitted by the petitioner/accused, a presumption under Section 139 of the N.I.Act would arise and it is a rebuttable presumption. However, the petitioner/accused can rebut the said presumption in her cross examination or by examining any independent witness. It appears from the record that the cheque was issued by the petitioner/accused in favour of the 1st respondent/complainant which is marked as Ex.P.1, but the same was dishonoured with the endorsement 'no such account'. The said

² 2008(2) SCC page 728

act itself would attract the offence punishable under Section 138 of the N.I.Act. But the course open to the petitioner/accused is to take appropriate action against the banker who dishonoured the cheque, if really the petitioner's account was in operation as on the date of presentation of the cheque for collection to the payee bank through collecting banker. But the petitioner/accused cannot disown her liability to pay the debt/amount covered by the dishonoured cheque. If, for any reason, she paid the amount covered by the cheque unpaid, at least within 15 days after appearance before the Magistrate, she can be acquitted, but she did not do so.

12. In view of the above discussion, I find no merit in any of the grounds raised in this Revision. The Criminal Revision Case is devoid of merit and is liable to be dismissed.

13. In the result, the Criminal Revision Case is dismissed at the stage of admission.

Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

M. Satyanarayana Murthy, J

10th October, 2017
Bvv