THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL. R.C. NO.369 OF 2017
AND
CRL. R.C. NO.370 OF 2017

COMMON ORDER:

Crl.R.C.No.369 of 2017 is filed under Section Sections 397 and 401 of Cr.P.C. challenging the judgment dt.27.01.2017 in Crl.A.No.468 of 2015 passed by the IV Addl.Metropolitan Sessions Judge, L.B.Nagar, Ranga Reddy District confirming the conviction and sentence imposed by the VIII Special Magistrate, L.B.Nagar, Ranga Reddy in C.C.No.220 of 2014, dt.26.05.2015 whereunder the petitioner was found guilty for the offence punishable under Section 138 of N.I. Act, convicted and sentenced him to undergo simple imprisonment for one year and directed to pay Rs.3,90,000/- to the complainant towards compensation under Section 357(3) Cr.P.C.

2. Crl.R.C.No.370 of 2017 is filed under Section Sections 397 and 401 of Cr.P.C. challenging the judgment dt.27.01.2017 in Crl.A.No.397 of 2015 passed by the IV Addl.Metropolitan Sessions Judge, L.B.Nagar, Ranga Reddy District confirming the conviction and sentence imposed by the IX Special Magistrate, L.B.Nagar, Ranga Reddy in C.C.No.310 of 2014, dt.11.05.2015 whereunder the petitioner was found guilty for the offence punishable under Section 138 of N.I. Act, convicted and sentenced him to undergo simple imprisonment for one year and directed to pay Rs.3,90,000/- to the complainant towards compensation under Section 357(3) Cr.P.C.

3. In these two revisions, the petitioner is different but the respondents are common and the allegations are almost one and the same, and the

impugned orders passed by the trial Court are identical. Hence, I would like to dispose of both the revisions by a common order.

4. For convenience sake, the parties hereinafter will be referred to as petitioner and first respondent in both the revisions.

5. In C.C.No.220 of 2014, first respondent filed complaint against the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act alleging that the first respondent is manufacturer and supplier of poultry feed to the needy customers and the petitioner being the proprietor of Prabhaker Reddy Poultry Farm requested the first respondent to supply poultry feed under credit facility and out of good faith, the first respondent opened mutual running current account and supplied feed to the petitioner as per his request for the period from 01.04.2009 to 28.03.2013 and on persuasion by the first respondent, the petitioner issued a cheque bearing No.277894 dt.4.03.2013 for Rs.3,07,205/- drawn on DCB Limited, Gaddiannaram branch, R.R. Dsitrict in favour of the first respondent company towards discharge of legally enforceable debt along with interest as on 28.03.2013. When the first respondent presented the said cheque for collection in HDFC bank, Vanasthalipuram branch, it was dishonoured for the reasons 'insufficient funds.' Then, the first respondent issued a legal notice dt.15.03.2013 and the same was returned as unclaimed on 25.03.2013 and the petitioner neither paid the amount nor gave any reply. Hence, the complaint.

6. In C.C.No.310 of 2014, first respondent filed complaint against the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act alleging that the first respondent is manufacturer and supplier of poultry feed to the needy customers and the petitioner T. Shekar Reddy being the proprietor of Srija P.F., Meerpet, requested the first respondent to supply poultry feed under credit facility and out of good

faith, the first respondent opened mutual running credit account and supplied feed to the petitioner as per his request for the period from 01.04.2009 to 28.03.2013 and on persuasion by the first respondent, the petitioner issued a cheque bearing No.678622 dt.4.03.2013 for Rs.3,00,545/- drawn on Andhra Bank, Meerpet Branch, R.R. District in favour of the first respondent company towards discharge of legally enforceable debt along with covering letter and balance confirmation letter dt.4.03.2013 towards payment of balance outstanding amount. When the first respondent presented the said cheque for collection in HDFC bank, Vanasthalipuram branch on 05.03.2013, it was dishonoured by the payee bank for the reasons 'Account blocked.' Thereupon, the first respondent issued a legal notice dt.15.03.2013 which was served on the petitioner on 25.03.2013 and the petitioner neither paid the amount nor gave any reply. Hence, the complaint.

7. After securing the presence of the petitioner and after compliance of Section 207 Cr.P.C., the petitioner was examined under Section 251 Cr.P.C., explained gist of accusation made against the petitioner, he pleaded not guilty and claimed to be tried.

8. During trial, on behalf of the first respondent PW-1 was examined and marked Exs.P-1 to P-12. After closure of complainant's evidence, the petitioner was examined under Section 313 Cr.P.C. explaining incriminating material that appeared against them in the testimony of PW-1 and he denied the same. The petitioner examined himself as DW-1 and got marked Ex.D-1 to D-4.

9. Upon hearing argument of both the counsel, in both the calendar cases, the trial Court found the petitioner guilty for the offence punishable under Section 138 of N.I. Act and imposed sentence as stated supra.

10. Aggrieved by the conviction and sentence under impugned calendar and judgment, the petitioners in both the cases preferred appeals in Crl.A.Nos.468 of 2015 and 397 of 2015 which were ended in dismissal by judgment dt.27.01.2017 confirming the conviction and sentence imposed by the trial Court.

11. Aggrieved by the judgment in criminal appeals, the present revisions are filed by both the petitioners mainly on the ground that the appellate court without appreciating the facts and circumstances of the case, confirmed the conviction and sentence imposed by the trial court, erroneously. It is also contended that the cheque was obtained by the firsts respondent towards security and the petitioner purchased the feed with net cash and never purchased at any time on credit basis and that PW-1 did not file invoices and delivery challans to believe the supply of feed and that both the courts below erroneously concluded that the cheque was issued towards discharge of legally enforceable liability due under the mutual running current account. Finally it is contended that when the prosecution is mala fide, the trial court and appellate court would have acquitted the petitioners for the offence punishable under Section 138 of N.I. Act while dismissing the complaint, but erroneously concluded that the petitioners are guilty for the said offence, convicted and sentenced them as stated supra.

12. When the matters reached for hearing, learned counsel for the petitioners did not appear before the Court to represent the matter. Therefore, the revision is listed today under the caption for dismissal, despite it, the learned counsel neither advanced the arguments nor got it represented. The present revisions are filed on various grounds. However, in criminal revision cases, this court even in the absence of counsel, can peruse the record and pass appropriate orders. Therefore, having no

other alternative, both the revisions are disposed of verifying the record available, as per decision in NISHA SHARMA AND OTHERS v. VINOD KUMAR SHARMA[1].

13. Therefore, persuaded by the judgment of Delhi High Court in NISHA SHARMA (1st supra), without waiting for the counsel for the petitioners, verifying the material on record, I would like to decide the revisions pending before this court.

14. The present revisions are filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

15. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.

16. 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[2].

17. 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[3].

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[1] 1990 Crl.L.J. (NOC) 57 (Delhi)
[2] 1977 Crl.L.J. 1101
[3] (1986) 3 SCC 445

18. Here the contention urged in the grounds of revisions is two fold. The first ground is that the trial court and the appellate court did not appreciate the evidence in a proper perspective and committed illegality in arriving conclusion that the cheque was issued towards discharge of legally enforceable debt or liability. But, how the trial court and appellate court did not appreciate the evidence in proper perspective was not explained except raising ground No.2 in the grounds of revision and as stated above, this court cannot interfere with the concurrent fact finding recorded by the courts below while exercising jurisdiction under Sections 397 and 401 Cr.P.C. Therefore, this court while exercising jurisdiction cannot re-appreciate the evidence and mostly the jurisdiction is confined to legal aspect. But, no such legal question is brought to the notice of this court by the counsel for the petitioners and conveniently avoided to advance argument, remained absent for one reason or the other.

19. The second ground urged in the grounds of revisions is that the first respondent did not produce credit invoices and challans to believe supply of stock and Ex.P-2 statement of account is not sufficient to establish the quantum of stock supplied and the original ledger is not placed before the court. In fact, before the trial court and appellate court no such ground is urged and the trial court discarded the oral evidence of DW-1 and concluded that the cheque was issued towards discharge of legally enforceable debt, based on the entries in the books of account maintained in the business of the petitioners and it is not known whether he raised such contention and adduced any evidence in support of it.

20. Here, it is a purely question of fact i.e. non-production of ledgers and stock books etc. which confirms the stock supplied to the petitioners. Such question of fact cannot be allowed to be raised for the first time in

the revision while exercising power under Section 401 Cr.P.C. Therefore, such contention for the first time cannot be entertained at the stage of deciding the revision under Sections 397 and 401 Cr.P.C. However, it is not their case that the petitioners never purchased poultry feed but their contention was that they purchased the poultry feed on payment of cash, but not on credit basis. If that is the case, why they issued cheques, was not explained. Their contention was that the cheques were issued towards security in the year 2001. But, the same cannot be accepted for the simple reason that the petitioners were not in the habit of purchasing poultry feed on credit basis and always purchase on payment of cash, according to their contention. But, the same is not supported by any evidence and apart from that the contention raised by the petitioners is highly improbable to the ordinary course of events and such plea cannot be accepted. Even if the cheques were issued for security purpose, the burden is still on the petitioners, in view of presumption under Section 139 of N.I. Act, such presumption can be rebutted or dispelled by eliciting something in the cross examination of PW-1 or by adducing independent evidence. But, the petitioners miserably failed to rebut the presumption under Section 139 of N.I. Act though examined themselves as DW-1. Simply they pleaded that they did not remember the date of issue of cheques and purchase of poultry feed, but admitted that they issued signed blank cheques towards security. Therefore, even if this contention of the petitioners is accepted, still the holder of the cheque is competent to fill the columns of the cheques and present for collection in view of section 20 of N.I. Act i.e. cheque issued by the petitioners are allegedly blank signed cheques. In such a case, it is for the petitioners to prove as to what made them to issue such cheques.

21. When once a document was duly signed and delivered to the plaintiff-transferor, it is nothing but an inchoate instrument under Section 20 of N.I. Act and it reads thus:

> *"20. Inchoate stamped instruments:- Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. "*

22. So, a bare reading of Section 20 of N.I. Act, 1881, the holder is competent to make or complete the instrument, when the negotiable instrument is handed over duly signing on it, it also impliedly granted that the holder is authorized to fill the document.

23. In the judgment of the Division Bench of our Hon'ble High Court reported in Duggineni Seshagiri Rao Vs. Kothapalli Venkateswara Rao[4], Their Lordships Justice Bilal Nazki and Justice E.Dharma Rao held in para 6 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 ceratin person or to a bearer.*
>
> *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*

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[4] 2001(6) ALT95 (D.B.)

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 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."

Their Lordships 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."

24. A similar question came before the Division Bench of Punjab and Haryana reported in Sukhminder Singh Vs. Nirbhai Singh[5].

25. In this regard, I am persuaded by an unreported judgment of the Hon'ble High Court of Karnataka in C.R.P.Nos.1574, 1590 and 1591 of 1995, dated 01-10-1999 [H.Maregowda and etc. Vs. Thippamma and others], wherein His Lordship Justice T.N.Vallinayagam held as follows:

"A reading of Section 20 of the Negotiable Instruments Act which is extracted above will reveal that the words used are either wholly blank or having written thereon an incomplete negotiable instrument. Thus, even if a blank promissory note is given, it cannot be taken as a defence to avoid

[5] AIR 2013 P & H 77

> *a decree based on such instrument, once it is found that the document produced before the Court satisfies the requirements of a promissory note within the meaning of the Negotiable Instruments Act. The instrument may be wholly blank or incomplete in particular; in either case, the holder has the authority to make or complete the instrument as a negotiable one."*

26. In the judgment of Apex Court reported in T. NAGAPPA v. Y.R. MURALIDHAR[6], the Division Bench of the Apex Court held that when a contention has been raised that the complainant has misused the cheque, even in a case where a presumption can be raised under Section 118(a) or 139 of the said Act, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof. As the law places the burden on the accused, he must be given an opportunity to discharge it. An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognized by the Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure.

27. There is a presumption under Section 139 of Negotiable Instruments Act. According to it, the Court shall presume unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, or any debt or other liability. When once the cheque is issued by the drawer a presumption under Section 139 of Negotiable Instruments Act in favour of the holder must follow. The Apex Court in "*M/s Modi Cements v. Kuchil Kumar Nandi*[7]" held that when the cheque was issued by the drawer, a presumption shall be drawn and issuing instructions to stop payment would amount to offence punishable under Section 138 of Negotiable Instruments Act.

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[6] AIR 2008 SC 2010
[7] AIR 1998 SC 1057

28. The presumption under Section 139 of Negotiable Instruments Act is a rebuttable presumption and such presumption can be rebutted either by eliciting something in the cross-examination of prosecution witnesses or by adducing independent evidence to dispel the statutory presumption contained under Section 139 of Negotiable Instruments Act.

29. Here in the present cases, the accused himself was examined as DW-1and marked Ex.D-1, but unable to rebut or dispel the presumption under Section 139 of N.I. Act. In such a case, the court has no option except to conclude that the cheque was issued towards discharge of legally enforceable debt.

30. Another contention raised before this court in the grounds of revisions is that it was as security.

31. The Apex Court in "*Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd.*[8]" considered the scope of Section 139 of N.I. Act and issue of cheque towards security, finally concluded that initially the burden of proof lies on the accused to prove that it was not issued towards legally enforceable debt, otherwise the court has option to presume that it was issued towards legally enforceable debt.

32. Therefore, taking the cumulative effect of law laid down by the Apex Court and other Courts including Division Bench and evidence available on record, I find no substance in the contention raised in the grounds of revision by the learned counsel for the petitioner warranting interference of this court while exercising jurisdiction under Sections 397 and 401 Cr.P.C. since the questions raised before this court are issue of facts but not issue of law. Consequently, both the revisions are liable to

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[8] AIR 2016 Supreme Court 4363

be dismissed as they lack merits.

33. In the result, both the revision cases are dismissed at the stage of admission.

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

M.SATYANARAYANA MURTHY,J

DATE:06-09-2017
ccm

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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AND
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