

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.1429 OF 2005

ORDER:

This criminal revision case is filed under Sections 397 & 401 of Cr.P.C, challenging the order passed by II Metropolitan Magistrate, Cyberabad in C.C.No.2010 of 2001 dated 16.05.2005, wherein, the Trial Court found the first respondent/accused not guilty for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'Act').

For the sake of convenience, the parties will be referred as arrayed before the Trial Court.

The case of the prosecution in nut shell is that the accused borrowed an amount of Rs.1,49,000/- from the complainant and executed a promissory note Exp-7 agreeing to repay the same together with interest within one year in instalments, as and when demanded. Thereafter, when the complainant demanded for payment of the debt due to him, the accused issued a cheque for Rs.20,000/- towards discharge of part of the debt due under the promissory note Ex.P-7. On presentation of the cheque for collection, the said cheque was returned with cheque return memo and dishonoured on the ground of 'insufficient funds'. Thereafter, notice under proviso (b) to Section 138 was issued calling upon the accused to pay the amount covered by the cheque. Though the notice was received, no purpose was served. Therefore, the complainant filed private complaint.

The Trial Court took the case on file and upon securing the presence of the accused by issuing summons after compliance of necessary formalities, the accused was examined under Section 251 of Cr.P.C. explaining the accusation made against him, but he pleaded not guilty and claimed to be tried.

During trial, P.W.1 was examined on behalf of the complainant and marked Exs.P-1 to P-10 and Exs.D-1 & D-2 were marked.

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

Upon hearing argument of both the counsel, the Trial Court disbelieved the possibility of the complainant lending such huge amount to the accused prior to execution of Ex.P-7 as there were already disputes between the complainant and accused, acquitted the accused.

Aggrieved by the acquittal of the petitioner herein, the present criminal revision case is preferred mainly on the ground of registration of crime is prior to execution or pronote Ex.P-7 and it is not a valid ground. When there is material to establish that the first respondent herein/accused committed an offence, the Court is bound to convict the accused and therefore, the finding of the Trial Court is illegal and liable to be set-aside.

During hearing, learned counsel for the petitioner Sri D. Madhava Rao reiterated the contentions raised before the Trial Court.

The powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings of fact recorded by the courts below. But, under Section 401(3) Cr.P.C there is a clear interdict to exercise power to convert acquittal into conviction, but this Court can order re-trial in only exceptional circumstances. It is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should be exercised by the High Court only in exceptional cases, when there is some defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Ordinarily, High Court does not interfere against an order of acquittal passed Lower Court.

In the present case, it is an undisputed fact that on the complaint lodged by the petitioner with the police, a crime was registered against the first respondent/accused two days prior to execution of pronote Ex.P-7. When there was consistent bitter enmity between the parties, the question of borrowing amount by the first respondent/accused from the petitioner and lending of amount by the petitioner would not arise in normal course of events and it is not the case that the case was withdrawn or compromised prior to alleged lending of amount. Therefore, the conduct of the petitioner in lending amount within two days i.e. after registration of crime against the first respondent/accused is highly improbable to the natural conduct of human being and the Trial Court rightly disbelieved the complainant's story and issue of

cheque in lieu of discharge of part of the legally enforceable debt or liability.

In **K. Chinnaswamy Reddy vs. State of Andhra**¹, the Supreme Court held as follows:

7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of s. 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be : where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished of produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of s. 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.”

In view of the law declared by the Apex Court, this Court can interfere with the acquittal only in extraordinary circumstances where the findings are not based on any evidence. At the same time, Section 401(3) Cr.P.C made it clear that in revision, the High Court cannot convert a finding of acquittal into one of conviction

¹ 1962 AIR 1788

ordering re-trial. When there is no finding of acquittal for the offence, the power of revisional court to convert an acquittal into conviction under Section 401(3) Cr.P.C does not operate. Even to order for re-trial, there must be exceptional circumstances. In the present case, in the absence of any exceptional circumstances to order for re-trial and all the more, the findings of the Trial Court are probable and there is any amount of justification to record such reason. Hence, I find no ground to set-aside the order of acquittal under challenge passed by II Metropolitan Magistrate, Cyberabad in C.C.No.2010 of 2001 dated 16.05.2005 and the criminal revision case deserves to be dismissed.

In the result, the criminal revision case is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:31.08.2017

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