

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.2195 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C challenging the findings recorded by the I Additional Junior Civil Judge, Narasaraopet in C.C.No.420 of 2009 dated 24.09.2014, affirmed by the XIII Additional Sessions Judge, Narasaraopet in Criminal Appeal No.449 of 2014 dated 28.03.2017, dismissing the private complaint filed by the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'Act').

The petitioner filed a private complaint under Section 200 Cr.P.C against the respondent for the offence punishable under Section 138 of the Act, alleging that on 29.03.2007, the accused borrowed an amount of Rs.1,50,000/- and Rs.1,25,000/- on two different occasions for family expenses and executed two separate pronotes in favour of the petitioner to repay the same with interest at the rate of 24% per annum either to the complainant or to his order on demand. On repeated demands made by the complainant to discharge the debt due to him, the accused issued cheque bearing No.305843 dated 02.05.2009 for Rs.2,75,000/- drawn on State Bank of Hyderabad, Anakapalli in favour of the petitioner towards discharge of the debt, while promising to repay the balance debt due under the promissory notes within short time.

On presentation of cheque by the petitioner for collection with the collecting bank, i.e. State Bank of India, Narasaraopet on

22.07.2009, the said cheque was dishonoured on the ground of 'insufficient funds' and was returned with cheque return memo dated 30.07.2009. Thereafter, notice under Section 138(b) 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 petitioner 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.Ws.1 & 2 were examined on behalf of the complainant and marked Exs.P-1 to P-9. On behalf of the accused, D.W.1 & 2 were examined and Exs.D-1 to D-7 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 based on the legal notice Ex.D-2 and reply notice Ex.D-3 disbelieved the existence of legally enforceable debt or liability on the ground that the petitioner was at different place on the date of alleged issue of cheque and dismissed the complaint finding the accused not guilty for the offence punishable under Section 138 of Act.

Aggrieved by the order in C.C.No.420 of 2009, the petitioner filed CrI.A.No.449 of 2014, wherein, the Appellate Court confirmed concurred with the fact finding recorded by the Trial Court, dismissed the appeal. Aggrieved by the concurrent fact findings recorded by both the Courts below, the present criminal revision case is filed raising several contentions.

The main ground urged before this Court is that the respondent admitted his signatures on the documents i.e. promissory notes and cheques and the Trial Court did not consider Ex.D-1 notarized affidavit copy of settlement deed dated 01.07.2008 and Ex.D-6 letter addressed by P.W.1 about business transactions and committed an error in believing those two documents while acquitting the accused for the offence punishable under Section 138 of the Act. Issuance of cheque dated 02.05.2009 and the legal notice marked as Ex.D-2 is fatal to the case of the petitioner and consequently the Trial Court dismissed the complaint without considering the evidence in proper perspective and committed an error.

Learned counsel for the petitioner Sri T.V. Sridevi, at the stage of admission, contended that dismissal of complaint by both the Courts below by recording concurrent findings based on legal notice Ex.D-2 is an apparent error which warrants interference by this Court by exercising power under Sections 397 & 401 Cr.P.C, since the findings are not based on any material and requested this Court to set aside the order under challenge and convict the accused.

The present petition is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited and the High Court may exercise such power only when the Court found that there is manifest perversity in the order or the finding recorded by the Court is without any evidence or material, though section 401 of Cr.P.C. confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or failure to take proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case. The discretion conferred on the High Court by Section 401 of I.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. This Court normally cannot interfere with concurrent fact findings recorded by the Courts below, only in exceptional circumstances when findings are manifestly perverse or apparently erroneous.

At the same time, while deciding an application under Section 397 Cr.P.C, this Court cannot disturb the concurrent fact findings recorded by both the Courts, in view of the limited

jurisdiction that conferred on this Court. Moreover, Section 401(3) Cr.P.C does not authorise this Court to convert acquittal into conviction, but this Court can order re-trial in only exceptional circumstances.

Turning to the facts of the present case, the case of the complainant is based on Ex.P-1 cheque bearing No.305843, Ex.P-7 Promissory note dated 29.03.2007 and Ex.P-8 Promissory note dated 29.03.2007, cheque return memos marked as Exs.P-3 & 4. But, whereas, the defence set up by the accused was that there was business transaction and settlement between them which was notarized and marked as Ex.D-1. Curiously, a notice marked as Ex.D-2 was issued earlier to filing of the complaint and there was absolutely no reference about issue of cheques by the petitioner, though several transactions were referred. If, really, the cheques were issued in lieu of discharge of debt, there would have been a reference in the notice Ex.D-2 itself. The Trial Court discussed about the recitals in Ex.D-2 at paragraphs 19 & 20 of the judgment that there is a reference about Ex.D-2. The recitals would indicate demand made by the petitioner to discharge the debt covered by Exs.P-7 & 8 promissory notes within a month from the date of receipt of the legal notice. Ex.P-5 is the statutory notice. But, there was no reference about Ex.D-2 in the said notice. Failure to refer the cheques in Ex.D-2 creates any amount of suspicion on the case of the petitioner issuing cheque by the respondent in lieu of discharge of the debt due to him.

Moreover, Ex.D-2 notice was issued in the month of June, 2009 and cheque was allegedly issued on 02.05.2009 i.e. one month prior to issue of Ex.D-2. If, really, the cheque was issued in the same month, certainly they would have been mentioned in Ex.D-2. On the other hand, P.W.1 made a categorical admission in the cross-examination about issue of Ex.D-2 and his failure to make a reference about the cheques. Apart from that, he was working at a different place and to support his contention D.W.2 N. Krishnana Patnayak was examined to establish that he was working at a distant place to the place where the respondent allegedly issued a cheque in favour of the petitioner. Believing these two facts, the Trial Court recoded a finding which was affirmed by the Appellate Court. Such fact findings cannot be disturbed by exercising power under Section 397 Cr.P.C. Even otherwise, in view of the bar under Section 401(3) Cr.P.C, while exercising power under Sections 397 & 401 Cr.P.C this Court is not competent to convert acquittal into conviction, except in exceptional circumstances to order re-trial of the case.

In **Logendra v. Polai**¹ the Supreme Court specifically held that High Court cannot convert acquittal into conviction and such power can be exercised only in extraordinary and exceptional circumstances. But, here, I find no exceptional circumstances to order for re-trial of the case, exercising power under Section 397(2) Cr.P.C. Hence, I find no merits in the criminal revision case and consequently liable to be dismissed at the stage of admission itself.

¹ 1951 SC 316

In the result, criminal revision case is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:29.08.2017

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