HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case Nos.1420 of 2017 and
Criminal Revision Case (sr) Nos. 7511, 7513
and 7515 of 2017

COMMON JUDGMENT:

All these Criminal Revision Cases have been taken up together for the reason that the revision petitioner is one and the same and the second respondent/accused is also one and the same and, therefore, they are disposed of by a common judgment.

2. The present Criminal Revision Cases preferred by the revision petitioner/appellant/complainant as both the Courts below acquitted the 2nd respondent/accused in an offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short, 'N.I. Act').

3. For convenience sake, certain facts are necessary to advert to.

a) The revision petitioner preferred the Calendar Case No.159 of 2013 against the 2nd respondent alleging the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The complainant and the 2nd respondent are acquainted with each other since long time and due to the said acquaintance when the 2nd respondent approached him requesting to advance Personal Loan of Rs.30,00,000/-, he lent the same through Cheque bearing No.365912 for an amount of Rs.8,65,000/-, another cheque bearing No.062855 for Rs.19,50,000/-, having deducted Rs.1,85,000/- towards first instalment, and the 2nd respondent executed an Agreement of Personal Loan on 23.5.2011 agreeing to repay the loan amount in 24 instalments and issued 23 filled post-dated cheques each for Rs.1,85,000/-. Since the 2nd respondent did not adhere to the terms of agreement and issued cheques bearing Nos.515914, 515915 and 515916, dated 26.10.2012, 26.11.2012 and 26.12.2012 respectively, for a sum of Rs.1,85,000/- each drawn on Union Bank of India, A.S. Rao Nagar Branch, in favour of the complainant, and, when they were presented, they were dishonoured with a remark "Account closed" annexing a Cheque Return Memo, dated 26.12.2012, notice was got issued on 16.1.2013 by the revision petitioner and served on the 2nd respondent on 21.01.2013, but he did not repay the same. Therefore, he laid the complaint. Having recorded the sworn statement, the learned Special Magistrate-I, Malkajgiri, tried the case. He observed due formalities.

b) During trial in C.C. No.159 of 2013 on the file of Special Magistrate-I, Cyberabad at Malkajgiri (Crl. R.C. No.1420 of 2017), the revision petitioner examined himself as P.W.1 and marked Exs.P1 to P16, whereas on behalf of the 2nd respondent, none were examined and no documents were marked.

c) In C.C. No.247 of 2012 (Crl.R.C. No.7511 of 2017), the revision petitioner himself examined as P.W.1 and marked Exs.P1 to P10 and none were examined and no documents were marked on behalf of the defence.

d) In C.C. No.21 of 2013 (Crl. R.C. No.7513 of 2017), the revision petitioner himself examined as P.W.1 and marked Exs.P1 to P17 and no oral or documentary evidence is adduced on behalf of the defence.

e) In C.C. No.87 of 2014 (Crl. R.C. No.7515 of 2017), the revision petitioner himself examined as P.W.1 and marked Exs.P1 to P13, and no oral or documentary evidence is adduced on behalf of the defence.

f) In C.C. No.159 of 2013, C.C. No.21 of 2103 and C.C. No.87 of 2014, the learned Magistrate formulated the following identical points:

(i) Whether Exs.P1 to P3 cheque was issued by the accused towards discharge of any legally enforceable debt or liability?

(ii) Whether the complaint is able to establish the transaction between him and the accused?

(iii) Whether the complainant complied with the statutory provisions of sec. 138 (b) of the Act?

(iv) Whether or not the accused is liable to be convicted for the said offence?

g) In C.C. No.247 of 2012, the learned Magistrate formulated the following identical points:

(i) Whether Ex.P1 cheque was issued by the accused towards discharge of any legally enforceable debt or liability?

(ii) Whether the Ex.P1 Cheque Br.Nos.515903, dated 26.11.2011 for Rs.1,85,000. Ex.P1 was taken by the complainant from the accused towards liability?

(iii) Whether the complainant is able to establish the transaction between the complainant and the accused?

(iv) Whether the complainant complied with the statutory provisions of Sec. 138 (b) of the Act? And

(v) Whether or not the accused is liable to be convicted for the said offence?

4. The learned Magistrate having taken up all points together, extracted the provisions of Section 138 of N.I. Act, then referred to the rulings of the Hon’ble Apex Court in K.N. Beena v. Muniyappan [2001 (2) ALT (Crl) 382 SC], M/s. Narayana Menon @ Mani v. State of Kerala and another [2006 (3) Crimes 117 SC], Krishna Janardhan Bhat v. Dattatraya [2008 (1) ALD (Crl) 485 (SC)], Kumar Exports v. Sharma Carpets [2009 (1) ALD (Crl) 468 (SC)], Sudheer Kumar Balla v. Jagadish Chand [2008 Crl. L.J.], Rangappa v. Sri Mohan [(2011) 1 SCC (Crl) 184], Vijaya v. Laxman [(2013) 3 SCC 86], then, referred to what are the mandatory requirements of Section 138 of N.I. Act, and then taken up discussion keeping in view, the evidence let in by the revision petitioner.

5. Learned Magistrate drawn probabilities basing on the documentary evidence and the answers given by P.W.1 in his cross-examination, who is the General Power of Attorney of original complainant, to the effect that Personal Loan Agreement, dated 23.5.2011, even according to the case of the revision petitioner, the stamp paper shows that it was purchased on 27.5.2011, arrived at analysis that there is every reason to suspect the transaction under Ex.P13-cerified copy of Agreement for personal loan (original of which was filed in the Civil Court) as the second respondent has completely denied the execution of the said agreement.

6. According to the learned Magistrate, there could not have been an agreement being written on stamp papers which were showing the date of purchase, 4 to 5 days later and opined that it accounts for a strong suspicious feature in the case of the complainant. Thus, it is captioned as 'material discrepancy' by the learned Magistrate with regard to Ex.P13 between the parties. In such an event, according to the learned Magistrate, only the complainant is the best person to speak about the transaction under Ex.P13, but, he did not step into the witness-box, and, therefore, an adverse inference is to be drawn invariably against him.

7. Second material discrepancy pointed out by the learned Magistrate is, according to the evidence of P.W.1 and the contents of the complaint and the alleged transaction dated 22.5.2011, the amount was also paid as per Ex.P14 under Cheque bearing No.62855, dated 26.5.2011 for Rs.19,50,000/- that was given by M/s. Locknil Electronics. Therefore, the learned Magistrate entertained doubt as to whether the amount was paid to the 2nd respondent on 22.5.2011 or 26.5.2011 and this discrepancy was not resolved, and, again, the complainant is the only relevant witness to resolve the said doubt.

8. Certain other probabilities have been derived by the learned Magistrate, which are unnecessary to refer to. It is, therefore, clear even these discrepancies are sufficient enough to discard the case of the revision petitioner, and, therefore, the

learned Magistrate dismissed the complaint. Similarly in C.C. Nos.247 of 2012, 21 of 2013 and 87 of 2014.

9. When the complainant carried the matter by preferring Criminal Appeal Nos.376, 379, 375 and 377 of 2015, the learned V-Additional Metropolitan Sessions Judge, Rangareddy District at L.B. Nagar, on his independent analysis of the evidence on record both, oral evidence of P.W.1 and documentary evidence, having referred to the appellate court powers to review or re-appreciate and re-consider upon which Order of Acquittal founded in paragraph-11 and Duty of Appellate Court in paragraph-12, where the appellate Court has to take care and caution, formulated the following points in paragraph-13:

> "13. Now, the points for determination are :
>
> (1) Whether the accused discharged the reverse onus to rebut the presumptions under Section 118 (a) and 139 of Negotiable Instruments Act?
>
> (2) Whether there are any grounds to interfere with the Order of Acquittal passed by the Lower Court?"

10. The learned Appellate Court has again referred to the statutory presumption under Section 138 of N.I. Act and, thereafter, referred to Exs.P1 to P3 cheques for Rs.1,85,000/-, Exs.P4 to P6 cheque return memos, Exs.P7 to P9 debit advices, Ex.P10 office copy of legal notice, Ex.P11 postal acknowledgement, Ex.P12 certified copy of General Power of Attorney, Ex.P13 Agreement of Personal Loan and they being in possession of the complainant, more particularly, Mortgage Deed dated 23.5.2011 for Rs.6,00,000/- and the Letter issued by

State bank of India under Ex.P14, Income Tax Returns under Ex.P15 and Bank Statement under Ex.P16, held in paragraphs-24 and 25 thus:

> "24. In this matter the case of the accused right from the beginning is consistent that he never borrowed Rs.30,00,000/- from the complainant and never issued any cheque for discharge of legally enforceable debt. Moreover P.W.1 admitted that he accused mortgaged the property in favour of the complainant's son for Rs.6,00,000/-. He also admitted that the complainant and the son of the complainant are doing money lending business. He further admitted that he do not know whether the mortgaged property is worth above Rs.30,00,000/-. As seen from the simple mortgage deed filed by the accused the property is worth of Rs.8,00,000/- out of which he obtained loan of Rs.6,00,000/-. He also admitted that there is no signature on the personal loan agreement. He also admitted that he did not file the Income Tax Returns pertaining to this transaction before the Court. He also admitted that he did not file money lending license before the Court. He also admitted that stamp paper was purchased on 27.5.2011 and executed on 23.5.2011 between the parties. He also admitted that the mortgage deed along with sale deed were in possession with the complainant. Therefore in view of above discussion the complainant failed to prove that there is legally enforceable debt of Rs.30,00,000/- from any corner and failed to prove that disputed documents in this case pertains to the present transaction. Therefore these are the improbabilities in this case. Therefore these improbabilities are suffice to hold that the accused rebutted the presumptions under Sections 118 (a) and 139 of Negotiable Instruments Act by showing the preponderance of probabilities. Therefore this Court has no hesitation to hold that there is no documentary evidence to show the existence of legally enforceable debt and that there is no documentary evidence to show that any loan transaction has indeed been taken place. Now the burden is shifted to the Complainant to prove his case beyond all reasonable

doubt but the Complainant failed to prove this case beyond all reasonable doubt.

25. Even otherwise it was held in a decision reported in 2009 (1) ALD (Crl.) 787 (SC) *Mahtab Singh and another v. State of U.P.*, wherein it was held that "two views, if possible, Appellate Court shall not interfere with Judgment of Acquittal, when view taken by trial Court, possible as well as plausible". In the present case on hand also the view taken by the Lower Court is possible and plausible. Therefore in view of the admissions of P.W.1 in the cross-examination and consistent defence of the accused this Court holds that the Complainant failed to establish the guilt of the accused for the offence punishable U/Sec.138 of Negotiable Instruments Act beyond all reasonable doubt and the benefit of doubt shall be given to the accused and consequently, the accused is entitled for Acquittal. Accordingly this point is answered."

11. On Point No.2, the learned Appellate Judge held that the findings recorded by the learned Magistrate do not suffer from any patent illegality nor can it be said that there is palpable misreading of evidence and, thus, having observed that there were no legal infirmities at all warranting interference, affirmed the Order of Acquittal recorded by the learned Magistrate.

12. Now, turning to the present Criminal Revision Case No.1420 of 2017, the grounds raised touching the findings recorded by the Court below. When the case has been listed there was no representation for the petitioner on number of times, initially on 7.3.2017, then on 2.6.2017, 25.10.2017. On 1.11.2017 the learned Counsel, Sri Ch. Venu Kumar, represented the Court that he has given up vakalat for the petitioner, and, therefore, it was adjourned to 15.11.2017. On

15.11.2017 the revision petitioner was not present in the morning session and even in the evening session and, therefore, adjourned to 16.11.2017. On 16.11.2017, revision petitioner was not present and the case was passed over till 3.30 p.m. Again at 3.30 p.m., when it was called there was no representation for the revision petitioner. Therefore, it was directed to be listed to this day. Hence disposed of on merits.

13. On a careful perusal of the order passed by the learned trial court, in regard to the material discrepancy touching the execution of Ex.P13, referred to above, in detail, it has to be held that there is merit in the finding recorded by the learned Magistrate to the effect that the said discrepancy ought to be resolved by examining the complainant; it was obligatory on the part of the complainant to step into box and resolve the discrepancy and, certainly, the said finding cannot be brushed aside. It is true, when the contents written in Ex.P13 show the purchase of the stamp paper as '27.05.2011', the date of agreement of personal loan is shown as '22.05.2011', which was stated in the complaint, and even admitted by PW1 as to the date of purchase of stamp paper as occurring on Ex.P13, certainly, it gives any amount of suspicion over the case put forth by the revision petitioner, more importantly, as the revision petitioner screened complainant not entering into box. Therefore, that finding recorded by the learned trial court, as affirmed by the appellate court, certainly, cannot be faulted.

14. The second main drawback in the present complaint has been that there is no explanation as regards the probability that can be derived from Ex.P14, as rightly held by the trial court. Ex.P14 reveals that an amount of Rs.19,50,000/- under cheque bearing No.62855, dated 26.05.2011, was given by M/s.Locnil Electronics to one M.Satish, who is the son of the complainant. As per the contents of Ex.P14, M/s.Locknil Electronics has given the said cheque but not the complainant in his personal capacity. But when seen the cause title, the complainant in his personal capacity has filed the complaint alleging the aforesaid offence. The suspicion expressed by the learned trial court based on the material discrepancy with regard to the advancement of loan by the complainant is also based on appreciation of documentary evidence. The probability basing on which such strong suspicion was entertained by the trial court has been whether the amount was paid to the accused on 22.05.2011 or 26.05.2011 and the petitioner has not adduced any evidence to show that the said amount was really paid to the 2nd respondent/accused.

15. These two findings recorded by the learned trial court are sufficient to hold that the complainant failed to prove that there exists legally enforceable debt or liability on the part of the 2nd respondent. Hence, the findings recorded by it cannot be termed as suffering from any legal infirmity warranting interference and that has been the reason the lower appellate court elaborately dealing with once again under points 1 and 2 arrived at similar findings.

16. That apart, the mortgage deed, dated 23.05.2011, for Rs.6,00,000/- has to be in the possession of the complainant is yet another circumstance, which comes in the way of the complainant, which the learned lower appellate court has observed. Therefore, when viewed in the context of appreciation of evidence by both the courts below, certainly, it is on proper lines in accordance with the evidenciary rule. As no perversity is to be found, no interference is warranted. There is no merit in these revision cases. The present revision cases fail and are liable to be dismissed.

The Criminal Revision Cases are accordingly dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

November 23, 2017
GBS/LMV