

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.1873 OF 2008

JUDGMENT:

The present Criminal Revision Case is filed by the appellant - accused questioning the judgment, dated 22.10.2008, passed in Criminal Appeal No.488 of 2006, by the IX Additional Sessions Judge (Fast Track Court), Guntur, confirming the order of conviction and the sentence of imprisonment, dated 16.10.2006, by the V Additional Munsiff Magistrate, Guntur in C.C. No.461 of 2005.

2. In C.C. No.461 of 2005, the learned Magistrate convicted the revision petitioner - accused under Section 255 (2) of the Code of Criminal Procedure, 1973, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'Act, 1881') and inflicted sentence of rigorous imprisonment on her for a period of four months and also to pay a fine of Rs.500/- with default sentence of simple imprisonment for a period of one month. Of course, no compensation was awarded. Challenging the same, the revision petitioner preferred appeal in Criminal Appeal No.488 of 2006 before the learned Sessions Court, and the learned Sessions Judge dismissed the appeal, by her judgment, dated 22.10.2008, confirming the conviction and sentence imposed on the revision petitioner.

3. There has been no representation for the revision petitioner, despite listing the matter at least half a dozen times and keeping aside the case also till evening by calling even at 2.30 p.m., on occasions. Since the Criminal Revision Case relates to the year 2008, and the Calendar Case relates to the year 2006, the matter is taken up for disposal on merits.

4. A perusal of the grounds would not clearly indicate as to what are the legal infirmities in the findings recorded by the Courts below. She would plead that she did not commit any offence, much less the offence under Section 138 read with 142 of the Act, 1881 and, thus, the cheques were issued towards security to the promissory note amount, but not in the status of a debtor and the complainant retained both the cheques as well as the promissory note as security for future transactions. These all are only factual aspects that have been again agitated in the present grounds of revision without there-being any substantiation as to how the findings are unsustainable.

5. Now, turning to the judgment rendered by the learned Magistrate, the learned Magistrate examined the evidence of PWs.1 and 2 on behalf of respondent No.1 - complainant and marked the documents Exs.P-1 to P-12, whereas, on behalf of revision petitioner - accused, no witnesses were examined and no documents were filed.

6. The learned Magistrate referred to the evidence of PW.1 and found that the accused borrowed an amount of Rs.25,000/- from respondent No.1 on 21.09.2004, promising to repay the same with interest at 24% per annum, and later towards part payment, a sum of Rs.1,000/- was paid and it was acknowledged and again another sum of Rs.1,000/- was paid and the same was acknowledged on Ex.P-1, and that Exs.P2 to P-4 are post-dated cheques for Rs.5,000/-, Rs.10,000/- and Rs.10,000/- respectively, drawn on Andhra Bank, Srinagar Colony, Guntur; they were returned on the ground of “insufficient funds”, and cheque return memos were also marked as Exs.P-5 to P-7; Ex.P-8 is the debit advice issued by UCI Bank, Arundelpet, Guntur; Ex.P-9 is the served copy of legal notice, and Ex.P-10 is the office copy of legal notice; Ex.P-11 is the postal acknowledgment and reply given by accused was marked as Ex.P-12. The learned Magistrate also found that the accused admitted the signatures on the promissory note and, therefore, drawn the statutory presumption basing on Exs.P-2 to P-4 and placing reliance in **V. Munikrishnaiah v. C. Janakirama Naidu and Another**¹ and **Hiten P. Dala v. Bratindranath Banerjee**² for the proposition that the burden rests on the accused to prove that there is no subsisting liability that exists between them, held that nothing is placed to show that the cheques were issued towards security.

¹. 2005 (1) ALD (Crl.) 638 (AP)

². 2001 (2) ALD (Crl.) 234 (SC)

7. On point No.2, the learned Magistrate found no infirmity or infraction of any mandatory requirement in issue of notice and, thus, found that the offence punishable under Section 138 of the Act, 1881 was proved beyond all reasonable doubt.

8. Questioning the same, the accused preferred the aforesaid appeal. In regard to the conviction and quantum of sentence inflicted on her by the learned Magistrate, on appeal, the same was confirmed by the learned Sessions Judge by independently examining the evidence of PWs.1 and 2 and the documentary evidence.

9. Turning to the present Criminal Revision Case, as already observed, no tangible ground is agitated as to in what manner the findings recorded by the Courts below are patently illegal and even the statutory presumption is available for the reason that there is no dispute in regard to execution of promissory note and so also the issue with regard to issue of cheques referred to in the above, and once it is clear as regards pro-note as well as cheques, then onus shifts to the accused to prove that the pro-note - Ex.P-1 was executed towards security. In which direction, there is no evidence at all and, therefore, the presumption stood un-rebutted.

10. Since no legal infirmity is to be found in any of the findings recorded by the Courts below, there is no merit in the present Criminal Revision Case.

11. The present Criminal Revision Case is, accordingly dismissed. Further, the revision petitioner - accused is directed to surrender before the learned V Additional Judicial Magistrate of First Class, Guntur on or before 27.12.2017 to serve out the sentence of imprisonment. In case, she fails to surrender, the learned Magistrate is directed to secure her presence and put her in prison to serve out the sentence of imprisonment.

As a sequel thereto, miscellaneous petitions, if any, pending in the present revision, stand closed.

A. SHANKAR NARAYANA, J

November 28, 2017.
Mgr

