

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.222 OF 2006

JUDGMENT:

The present Criminal Revision Case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code'), challenging conviction of the revision petitioner - accused, under Section 255(2) of the Code for the offence punishable under Section 138 of Negotiable Instruments Act, 1881, and the sentence of simple imprisonment for a period of six (6) months and fine of Rs.5,000/- and in default to undergo simple imprisonment for a period of one (1) month inflicted by the learned IV Additional Chief Metropolitan Magistrate, Hyderabad, by the judgment dated 23.11.2005 in C.C. No.852 of 2000, as affirmed by the learned IV Additional Metropolitan Sessions Judge, Hyderabad, by the judgment dated 04.01.2006 in Criminal Appeal No.366 of 2005.

2. By the order dated 06.02.2006, in Criminal R.C. M.P. No.295 of 2006, this Court ordered suspension of sentence of imprisonment and enlarged the revision petitioner on bail on the same terms and conditions on which he was previously enlarged on bail.

3. Heard Sri C. Sharan Reddy, learned counsel for the revision petitioner - accused, and none appears for respondent No.2 - complainant. Perused the material on record.

4. As many as four main submissions have been made by the learned counsel for the revision petitioner in attacking the findings recorded by the Courts below. The first submission is that the affidavit-in-chief examination is not attested and this accounts for an infirmity and, therefore, sought to exclude the evidence of PW.1. Second, that attesor to promissory note is not examined and, therefore, the mandatory requirement of existence of enforceable debt or liability is not proved. Third, that the signatures occurring on the promissory note and the cheque said to have made by the revision petitioner are altogether dissimilar and not identical, which the Courts below totally overlooked. Last submission is that the mandatory requirement of service of notice under Section 138(9) of Negotiable Instruments Act, 1881, was not complied with.

5. So far as the first submission is concerned, the affidavit of PW.1 filed in chief-examination, in fact, does not require attestation, as once the chief-affidavit is filed, the documents therein are marked by the learned Presiding Officer having ascertained with the witness as to the correctness of the contents mentioned in the affidavit in chief-examination and the cross-examination would be recorded by the Magistrate. Therefore, it cannot be said that it accounts for legal infirmity.

6. Concerning the second submission that the attesor to the promissory note is not examined, unless the provisions of Negotiable

Instruments Act, 1881, mandate that a promissory note requires attestation, at least, by one or two witnesses, stipulating a condition by a relevant provision, no attesor is required to attest so far as execution of promissory note is concerned. In such an event, non-examination of the attesor, even though, the witnesses signed or attested the promissory note, cannot be construed as accounting for legal infirmity.

7. Turning to the submission requiring this Court to compare the signature of the revision petitioner occurring on the promissory note and on the cheque and to arrive at a conclusion, certainly, the said submission cannot be acceded to for the reason that there have been positive findings recorded by the learned trial Court and also the learned lower appellate Court based on appreciation of evidence. In fact, the revision petitioner ought to have exercised his option of referring the cheque as well as his admitted signatures to be sent to the handwriting expert and invited an opinion. Having not availed of such an opportunity at the threshold or required the Court at least to examine the signatures on the promissory note and the disputed cheque by making an application under Section 73 of the Indian Evidence Act, it is now not open for him to come out with such a submission in the present revision case. Therefore, there is no merit.

8. Turning to the last submission that there has been non-compliance of mandatory requirement of service of notice, it relates to vital aspect, which ought to have been agitated before the Courts below. On this aspect of the case, the Courts below consistently held that there is no infirmity at all nor non-compliance of any mandatory provision and on the other hand, referring to Section 27 of The General Clauses Act, 1897, and applying the principle envisaged therein. Therefore, certainly, it is difficult to accept the said submission.

9. When these submissions are sidelined, it cannot be said that the judgment passed by the trial Court as affirmed by the lower appellate Court suffer from patent illegality. Thus, there is no merit in the present revision case.

10. Therefore, the Criminal Revision Case is dismissed confirming the judgment under challenge.

11. As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision case stand dismissed.

12. In fact, the learned lower appellate Court directed the revision petitioner to receive the sentence as imposed by the trial Court and ordered the trial Court to take steps.

13. Hence, the revision petitioner directed to surrender before the learned IV Additional Chief Metropolitan Magistrate, Hyderabad, by 08.01.2018 to serve out the sentence. In case, he fails to surrender, the learned Magistrate is directed to secure his presence in person and to put him in prison to serve out the sentence of imprisonment.

A. SHANKAR NARAYANA, J

December 7, 2017.

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