HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

Criminal Revision Case No.673 of 2006

JUDGMENT:

This Criminal Revision Case is filed by the petitioner under Sections 397 and 401 Cr.P.C., challenging the judgment dated 31.03.2006 passed in Crl.A.No.27 of 2005 on the file of the VI Additional Sessions Judge, Ranga Reddy District at Vikarabad (FTC), wherein and whereby, the conviction and sentence imposed against the petitioner to undergo imprisonment for a period of six months, for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act'), in CC No.282 of 2001 dated 12.05.2005 on the file of the Judicial Magistrate of I Class, Pargi, was confirmed.

2. Heard the learned counsel for the petitioner. None appeared on behalf of the second respondent. Perused the record.

3. The contention of the learned counsel for the petitioner is three fold. 1. The courts below failed to appreciate that the alleged debt is not legally enforceable; 2. The findings recorded by the trial court are perverse therefore it is a fit case to allow the revision; and 3. The material available on record falls short to establish that the petitioner committed the offence punishable under Section 138 of the Act.

4. The facts leading to filing of the present criminal revision case in brief are as follows:

The petitioner borrowed an amount of Rs.1.00 lakh from the second respondent herein-complainant for his family necessities. The petitioner issued a cheque bearing No.982959 dated 19.03.2001 for an amount of Rs.1.00 lakh, drawn on State Bank of Hyderabad, Doma branch in favour of the second respondent, who in turn presented the cheque for collection in State Bank of Hyderabad, Kulkacherla branch and the same was returned with an endorsement 'insufficient funds'. The second respondent got issued a legal notice dated 08.04.2001 directing the petitioner to pay the cheque amount within 15 days. The petitioner neither issued a reply nor paid the amount. Having no other alternative, the second respondent filed complaint under Section 200 Cr.P.C., against the petitioner herein on the file of the Judicial Magistrate of I Class, Pargi, for the offence punishable under Section 138 of the Act.

5. During the course of trial, on behalf of the second respondent, PWs.1 to 4 were examined and Exs.P.1 to P.5 were marked. On behalf of the petitioner, DWs.1 and 2 were examined but no documents were marked. PW.2 did not appear before the court for cross-examination and therefore, his evidence was eschewed.

6. After having thoughtful consideration to the oral and documentary evidence available on record, the trial court found the petitioner guilty for the offence under Section 138 of the Act and he was convicted and sentenced to undergo imprisonment for a period of six months. Feeling aggrieved by the said conviction and sentence, the petitioner preferred Criminal Appeal No.27 of 2005 before the VI Additional Sessions Judge, (FTC) R.R. District at Vikarabad. The appellate court, after reappraisal of the oral and documentary evidence, without being influenced by the findings recorded by the trial court, arrived at a conclusion that the accused is guilty of the offence for which he was charged and dismissed the appeal confirming the conviction and sentence passed by the trial court. Hence, the present revision.

7. Now the point for consideration is whether the petitioner committed the offence punishable under Section 138 of the Act?

8. Point: As seen from the testimony of PW.1, the petitioner borrowed an amount of Rs.1,00,000/- from him promising to repay the same within short time and on several demands made by PW.1, the petitioner issued a cheque dated 19.03.2001 Ex.P.1 for a sum of Rs.1,00,000/-. When the said cheque was presented for collection, the same was returned with endorsement 'funds insufficient'. Exs.P.2 and P.3 are the Memos dated 31.03.2001 issued by the State Bank of Hyderabad, Doma Branch. A perusal of the testimony of PWs.3 and 4 clearly reveals that the cheque issued by the petitioner was returned with an endorsement 'funds insufficient'. PWs.3 and 4 are the Bank Managers. The testimony of PW.1 further reveals that he got issued a legal notice dated 08.04.2001 Ex.P.4 directing the petitioner to pay the amount within 15 days from the date of receipt of the notice, failing which he will be constrained to file a complaint. Ex.P.5 is the postal acknowledgment. By examining PWs.3 and 4 and by marking Exs.P.1, P.3 to P.5, the complainant established that the cheque issued by the petitioner was not honoured for want of sufficient funds.

9. Once the complainant proved that the cheque issued by the accused was not honoured, for one reason or the other, the burden of proof lies on the accused to establish that the amount due under the cheque in question is not legally enforceable debt. The court can draw presumption that the cheque in question issued by the accused is legally enforceable debt, unless the contrary is proved in view of Section 139 of the N.I. Act. Therefore, the burden of proof lies on the petitioner to establish that the debt covered under Ex.P.1 is not legally enforceable.

10. To dislodge the case of the second respondent, the petitioner examined DWs.1 and 2. As per the testimony of DWs.1 and 2, the second respondent has been running a chit business and in that transaction, the petitioner handed over a blank cheque to him. In the cross-examination, DW.2 in unequivocal terms deposed that he cannot say the name of the chit fund company of the second respondent/complainant. There is no whisper in their testimony with regard to place of business of the second respondent. DWs.1 and 2 did not produce even a single scrap of paper to establish that the second respondent has been running the chit business. It is not elicited in the cross examination of PW.1 that Ex.P.1 cheque does not bear the signature of the petitioner. Thus, the testimony of DWs.1 and 2 is no way helpful to the petitioner to establish that the second respondent obtained cheque from him in connection with the chit transaction.

11. The petitioner has set up the defence that the second respondent has no capacity to lent an amount of Rs.1,00,000/-. In the cross-examination of PW.1, nothing is elicited to establish that he has no source of income to lent an amount of Rs.1,00,000/-. The petitioner by putting a suggestion to PW.1 that he has been running a chit business admitted the financial capacity of the second respondent to lend money. If really, the stand taken by the petitioner is true and correct, what prevented him to come into the witness box to substantiate the stand taken by him? For the reasons best known, the petitioner did not choose to enter in to the witness box. Further, if really the petitioner did not issue a cheque in discharge of his legally enforceable debt, what prevented him to issue reply notice? This court is very much conscious

that merely because the petitioner has not issued a reply notice that itself is not a valid ground to draw adverse presumption against him.

12. The material placed before the court clinchingly establishes that Ex.P.1 cheque issued by the petitioner was not honoured for want of sufficient funds. Absolutely, there is no material on record to establish that the debt covered under Ex.P.1 is not legally enforceable. The trial court has rightly considered the material available on record and arrived at a conclusion that the accused is found guilty for the offence punishable under section 138 of the Act. The trial court has assigned the reasons much less cogent and valid reasons to its findings. The appellate court on reappraisal of the oral and documentary evidence, without being influenced by the findings recorded by the trial court, arrived at a conclusion that the petitioner has committed the offence punishable under Section 138 of the Act.

13. If the findings recorded by the courts below are not based on any evidence or based on evidence, which is not legally admissible, then the findings can be termed as perverse. In the instant case, the findings recorded by the courts below are supported by oral and documentary evidence. I am fully endorsing the findings recorded by the courts below.

14. In Padal Venkata Rama Reddy @ Ramu v Kovvuri Satyanarayana Reddy[1], the Supreme Court held as follows:

> When the matter has been concluded by concurrent finding of facts of two courts below, the High Court will not enter into any findings of facts.

[1] (2011) 12 SCC 347

15. It is a settled principle of law that the legality, propriety or correctness of an order passed by the trial Court is very foundation to exercise jurisdiction under Section 397 Cr.P.C. This Court can invoke jurisdiction under Section 397 Cr.P.C., if the decision under challenge is 1) grossly erroneous, 2) in contravention of a specific provision of law, 3) if the finding is recorded by ignoring the material evidence, and 4) if the trial Court exercised its judicial discretion arbitrarily or perversely. The petitioner has - failed to establish any one of the conditions mentioned above. Viewed from any angle, either on facts or in law, there are no grounds much less valid grounds to interfere with the findings recorded by the trial court.

16. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that this is not a fit case to interfere with the findings recorded by the Courts below.

17. Accordingly, the Criminal Revision Case is dismissed. The trial court is hereby directed to issue non-bailable warrant against the petitioner to undergo remaining period of sentence.

18. Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

T.SUNIL CHOWDARY, J

Dated: 05.01.2017
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HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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