HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2129 of 2015

ORDER:

The petitioner/complainant filed the present revision impugning the order dated 08.07.2015 passed in Crl.A.No.84 of 2013 by the XI Additional District and Sessions Judge (FTC), Ranga Reddy District, confirming the acquittal order dated 15.12.2012 passed in C.C.No.7 of 2012 by the III Special Magistrate at Kukatpally.

The case of the complainant in C.C.No.7 of 2012 was that the accused borrowed a sum of Rs.2,00,000/- in February 2009 and promised to pay within short time. Thereafter, the complainant demanded the accused on several times, then he had issued 2 cheques each for Rs.1,00,000/- drawn on Bank of Baroda, Malkajgiri Branch, Hyderabad. When the complainant presented the Ex.P1-cheque bearing No.507857 dated 10.07.2010 in his account in Syndicate Bank, Somajiguda Branch, it was returned due to insufficiency of funds as per Ex.P2-memo. Thereafter on 22.09.2010, the complainant got issued Ex.P3-legal notice covered by Ex.P4-registered post receipt and also by certificate of posting under Ex.P5 to the accused and he refused to receive as per Ex.P6-return RP cover and the notice is deemed to be served as per settled law of sufficient service and the accused failed to repay the amount. Hence the complaint. After taken cognizance from the accused denied accusation and in the course of trial, the complainant came to witness box and cause examined PW.2 one Madhav Rao and relied upon Exs.P1 to P8 which included the above besides Ex.P7-pronote for

Rs.1,00,000/- dated 30.09.2009 and Ex.P8 undertaking given by accused dated 07.05.2010. On behalf of the accused, he himself came to witness box as DW.1 and relied upon Ex.D1 statement of account. It is from said evidence and after hearing both sides, the learned Magistrate by acquittal judgment dated 15.12.2012, acquitted the accused. Aggrieved by the acquittal judgment passed by the learned Magistrate, the complainant preferred the appeal Crl.A.No.84 of 2013. The learned Sessions Judge on 08.07.2015 dismissed the appeal by confirming the acquittal judgment passed by the learned Magistrate. Aggrieved by the same, the present revision is maintained by the complainant.

The grounds of revision vis-à-vis oral submissions of the learned counsel for the petitioner/complainant are that the lower Court erroneously confirmed the trial Court's judgment. Both the Courts below erred in holding that the petitioner failed to establish the legally enforceable debt and ought to have seen that the undertaking bond given by the accused which is marked as Ex.P8 clearly show that the debt is in existence and the promissory note Ex.P7 also supports the version of the petitioner with regard to existence of legally enforceable debt. The observation of the lower Court that Ex.P7 promissory note cannot be taken into account on the ground that there is no pleading with regard to issuance of promissory note is illegal and ought to have seen that the accused admitted the issuance of promissory note and therefore, Ex.P7 is deserved to be considered and seeks this Court to allow the revision by setting aside the concurrent findings of the Courts below.

The learned counsel for the 2nd respondent/accused submits that the acquittal judgments passed by the Courts below hold good and for this Court while sitting in revision within the limited scope there is nothing to interfere and hence to dismiss the revision.

Heard and perused the material on record.

PW.1, the complainant deposed in his cross-examination that he is a Grade-I Contractor and accused approached him through PW.2-K. Madhav Rao their common friend in February 2009 for lending of money and they went to the house of the accused at Malkajgiri and the amount lent by him there and accused has given 2 cheques there covered by 2 cheque bouncing cases. PW.1 admitted in his cross-examination that as per Ex.D1 statement of account accused paid Rs.1,00,000/- on 23.09.2009 which is according to him in relation to sub contractor works complainant did under GVPR Engineering Works Limited, who fallen due to a tune of Rs.1 crore and accused assured to collect the same by receiving some amount. PW.2 stated the accused is his classmate and out of acquaintance, he introduced to PW.1 for the loan sought for of Rs.3,00,000/- and he stated Rs.1,00,000/- paid back through Syndicate Bank cheque and the accused dishonoured 2 cheques in question for Rs.1,00,000/- each. This is sum and substance of evidence of PWs.1 and 2.

The accused as DW.1 stated doing constructing business with name Sri Sai Tanuja Rahul Construction and Company, a partnership firm along with 2 more partners and complainant PW.1 approached him for amounts due to him with GVPR engineering works and he paid Rs.1,00,000/- for collecting said amounts and obtained 3 blank signed cheques and 2 singed blank pro-notes as security for collection of said amount and he could realize to PW.1 from GVPR company nearly Rs.10 to 15 lakhs. Later PW.1 asked to refund Rs.1,00,000/- given to him for not collecting total amount from GVPR and he refused to return that he could realize the amounts and accused misused the same of the said blank cheques and blank pro-notes in filing the false cases. Ex.P1-cheque and Ex.P7-pro-note contains the signatures of the accused is not in dispute. Once the cheques are rooted from the account of the accused and even stated given to the complainant, the burden is on the accused under reverse onus clause from the presumption under Section 118 and equally under Section 139 available in favour of the complainant as held by the three Judge Bench of the Apex Court in **Rangappa Vs. Sri Mohan**[1].

The evidence on record shows the amount lent and cheques received were at Malkajgiri. The trial Court observed however from the evidence of PWs.1 and 2 and of what was lent of Rs.2,00,000/- or Rs.3,00,000/- is in variance in saying the complainant failed to prove for Ex.P7-pronote not even mentioned of the amount due for which pro-note obtained and as to who are the attestors. Ex.P8 letter of undertaking given by the accused dated 07.05.2010 in fact shows on a stamp paper of accused taken hand loan of Rs.2,00,000/- and promised to pay Rs.1,00,000/- on or before 05.06.2010 and another Rs.1,00,000/- on or before 10.07.2010 and he has given Ex.P1-

[1] (2010) 11 SCC 441

cheque and another cheque each for Rs.1,00,000/- and there is no reference with Ex.P7-pronote dated 30.09.2009 for Rs.1,00,000/-. In fact the trial Court did not consider the improbability or impropriety of believing the defence version of accused giving blank pronotes and blank cheques and signed on stamp papers only for assurance of collection of the amount due to the complainant from GVPR engineering works that was missed from consideration and leave about Ex.P7-pronote not even taken proved and also Ex.P8 undertaking letter of accused, when the accused admitted the pronote signature vis-à-vis undertaking letter signature supra and also the signature on Ex.P1-cheque rooted from the account of the accused, from the presumption in favour of the complainant and the presumption is supported from Exs.P7 and P8 contents, the trial Court should not have dismissed the complaint, but for to appreciate how far discharged his burden under the reverse onus clause as laid down in Rangappa supra. Even the lower appellate Court did not consider this aspect in confirming the trial Court's acquittal judgment. This Court while sitting in revision cannot reverse the acquittal judgment to convict the accused from the bar under Section 401 (3) Cr.P.C., but for by setting aside the acquittal judgments to remit the matter back to the trial Court for fresh decision after hearing the arguments afresh.

Accordingly and in the result, the revision is allowed by setting aside the acquittal judgments of the Courts below and the C.C. is restored to the trial Court by remitting the matter back with a direction to hear the arguments afresh and decide on own merits.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 23.03.2017
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