

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2948 OF 2015

ORDER:

Aggrieved over the concurrent findings recorded by the V-Additional Chief Metropolitan Magistrate-cum-Principal Magistrate of Juvenile Justice Board, Hyderabad, dated 30.12.2014 in C.C. No.301 of 2013 acquitting the respondent/accused for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (for short, 'N.I. Act') and Section 420 of the Indian Penal Code (for short, 'I.P.C.') and confirmed by the judgment dated 10.09.2015 by the learned Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad in Criminal Appeal No.208 of 2015, the complainant/petitioner/appellant filed the present Criminal Revision Case.

2. The learned counsel for the revision petitioner raised various contentions in an attempt to attack the findings recorded by the Courts below and tried to impress upon the Court that there has been utter perversity in the findings recorded by the Courts below. The entire case rests on the interpretation of Section 25 (3) of the Indian Contract Act, 1872 (for short, 'Contract Act') and it has been the consistent stand of the revision petitioner, as argued by the learned counsel for the revision petitioner that the Courts below failed to notice that issue of Ex.P1 for repayment of time barred debt

amounts to written promise to discharge the said debt within the meaning of Section 25 (3) of the Contract Act and as such Ex.P1 becomes a cheque issued for discharge of legally enforceable debt, as contemplated by explanation (2) of Section 138 of N.I. Act. Much emphasis has been laid on the same.

3. As could be seen from the judgment, the learned Appellate Court referred to the ruling in **Dinesh B. Chokshi and others v. Rahul Vasudeo Bhatt and others**¹, relied on by the learned counsel for the revision petitioner, but it was distinguished observing that the admissions made by the revision petitioner as P.W.1 in his cross-examination coupled with non-examination of the material witness, who received Ex.P1 would go to the root of the stand taken by him and supports the stand taken by the respondent showing that Ex.P1 was not issued towards discharge of any liability, and, therefore, questioning of issuing a cheque for repayment of a time barred debt as written promise to the said debt, within the meaning of Section 25 (3) of the Contract Act does not arise.

4. The learned counsel also referred to the ruling in **Habeeb Khan and others v. Valasula Devi and others**² in regard to the burden that rests on the respondent/accused to show that the entire burden is cast on the revision petitioner by examining the material witnesses without withholding them.

¹ 2013 (1) Bank Case 619]

² AIR 1997 AP 53

5. Thus, when examined the judgments referred to by both the Courts below, the entire controversy revolves round on factual aspect. When on appreciation of the evidence on record, the trial Court and the Appellate Court record concurrent findings, question of interfering with the said findings does not arise. It cannot be said that both the Courts below misdirected and misinterpreted sub-section (3) of Section 25 of the Contract Act. The factual position in the present case entirely differs and, therefore, the principle embedded in Section 25 (3) of the Contract Act does not attract.

6. The learned counsel for the respondent also places reliance in **Hakeem Khan and others v. State of Madhya Pradesh**³ for the proposition that the High Court cannot interdict the verdict of trial Court and supplant its view over and above the view of the trial Court.

7. Therefore, there is no merit in the present Revision, and, accordingly, the Criminal Revision Case is dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Revision Case shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 03.11.2017
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³ (2017) 5 SCC 719