

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.1049 of 2014

ORDER:

The revision petitioner is the accused of C.C.No.444 of 2011 on the file of IX Special Magistrate, Hyderabad, based on the complaint of the revision 2nd respondent, for the offence under Section 138 of the Negotiable Instruments Act (for short 'the Act') based on Ex.P1 cheque No.562971 dated 03.09.2001 for Rs.1,25,000/-. Cognizance was taken by the learned Magistrate, based on the private complaint, as per the procedure contemplated by Sections 200 to 204 read with 190 Cr.P.C. from the cheque presented for encashment returned dishonoured from the statutory notice-Ex.P3 and acknowledged by accused under Ex.P4 with no reply from the accrual of cause of action. At the post cognizance stage after supply of copies when questioned the accused, he pleaded not guilty and thereby was put up for trial.

2. In the course of trial, the complainant came to the witness box as PW.1 and was cross-examined by the accused. After Section 313 Cr.P.C. examination from said evidence accused came to the witness box as DW.1 and cause examined one Rajender Reddy as DW.2. It is from said evidence and after hearing, the trial Court held that the accused did not discharge the burden by preponderance of possibilities as the non-giving of reply also leads adverse inference from the improbability in conduct of any ordinary prudent person and thereby accused is held guilty for the offence in sentencing him to undergo six months simple imprisonment with fine of Rs.3,000/- besides compensation of Rs.1,25,000/- to the complainant with default sentence.

3. It is when impugned by the accused unsuccessfully in Crl.A.No.875 of 2012, the same was practically ended in dismissal by re-appreciation of evidence by the learned Sessions Judge vide judgment dated 26.03.2014, but for in setting aside the fine amount of Rs.3,000/-. It is therefrom the revision is maintained.

4. The contentions in the grounds of revision vis-à-vis the oral submissions of the learned counsel for the revision petitioner/accused are that the trial Court failed to consider that the accused discharged the burden by preponderance of possibilities to rebut the presumptions available in favour of the complainant by came to witness box and also by cause examined one Rajender Reddy as DW.2, who deposed also about the demand for return of the cheque and he went and asked the complainant at the instance of the accused, the complainant failed to return the blank cheque taken as security and same is failed to appreciate properly by the Courts below; that the complainant could not even establish about how he passed consideration which is in dispute. Further PW.1 deposed that he did money lending earlier when he used to obtain pro-notes for lending. Further there is explanation from accused for non-giving of reply that when he approached and questioned the complainant, he stated that he has given notice to some other person and he need not worry, however contra to it the complaint case is filed and thereby nothing adverse inference can be drawn from non-giving of reply. In support of the contentions, the learned counsel for accused placed reliance on 4 judgments i.e., **K.Venkata Krishna Prasad Vs. Peram Sai Swarupa,**

Vijayawada and Another¹, Shaik Ayaz Vs. Abdul Khader and Another², K. Prakashan Vs. P.K. Surenderan³ and M.S. Narayana Menon alias Mani Vs. State of Kerala and Another⁴.

5. Whereas it is the submission of the learned counsel for the 2nd respondent/complainant that the concurrent findings of the Courts below supported by reasons and no way requires any interference by sitting in revision and hence to dismiss the revision.

6. Heard and perused the material on record.

7. As per the settled expression of the three judge bench of the Apex Court in **Rangappa Vs. Sri Mohan⁵** by explaining the expression of the Apex Court in **Krishna Janardhan Bhat Vs. Dattatraya G. Hegde⁶** by reiterating the proposition in **M.S.Narayana Menon** supra, under the reverse onus clause once accused admitted that the cheque was routed from his account and with his signature, from the presumptions the Court shall draw under Section 118 clauses (a) to (f) of the Act and also under the Section 139 of the Act of the cheque issued is for a legally enforceable debt or other liability, it is for the accused to rebut and what is held in **Krishna Janardhan Bhat** supra that no such presumption availing in favour of the complainant under Section 139 of the Act is held as not the correct law, but for to say as held in **M.S. Narayana Menon** supra of the accused need not even come to witness box, in proof of defence version by preponderance

¹ 2017 (1) ALT (Crl.) 259 (AP)

² 2012 (1) ALT (Crl.) 110 (AP)

³ (2008) 1 SCC 258

⁴ (2006) 6 SCC 39

⁵ (2010) 11 SCC 441

⁶ (2008) 4 SCC 54

of possibilities to rebut the presumptions, from cross-examination of complainant and witnesses even. In view of the above and also from the observation at Para 15 of said expression in **Rangappa** supra, non-giving of reply leads to adverse inference on defence. In fact this Court way back in **Chapala Hanumaiah Vs. Kavuri Venkateshwarlu**⁷ held categorically referring to Sections 3 and 114 of the Indian Evidence Act that not giving of reply leads to adverse inference from the fact that no prudent man but from the truth of the contents could keep quiet without reply, had there been any defence, without propounding the same.

8. Having regard to the above, whether the version of the accused that cheque is issued as security for Rs.50,000/- to be borrowed from the complainant and not for alleged lending of Rs.1,25,000/- and he was asked for return of the blank cheque as he secured amount somewhere and complainant could not even pay that amount and he even demanded besides sent DW.2 to demand the complainant for return of the cheque, he postponed. Had there been any truth, having acknowledged the legal notice he could not without reply for no prudent person could keep quiet. Thus the Courts below rightly drawn inference against the version of the accused, by disbelieving the belated propounded defence version.

9. Once such is the case, even he come to the witness box and cause examined DW.2 of the alleged demand for return of so called blank cheque, there is nothing to believe said defence as rightly concluded by the Courts below for no prudent person with

⁷ 1971 (1) An.W.R. 65

mere demand could keep quiet without any legal notice or police report. Regarding the complainant's version of earlier did money lending and was obtaining pro-notes and in this case for the long acquaintance with complainant no such pro-note obtained concerned, it is not a case of complainant has no means. In fact it is from the version of the accused for Rs.50,000/- asked for loan, he promised to give and obtained blank cheque before giving of the amount saying as security and did not even pay. Had it been true, could he keep quiet with alleged version of asked or sent DW.2 for return of the blank cheque as observed by the Courts below without even reply not to mention without even issuing any notice demanding for its return. In view of that and from the means of the complainant not in dispute and from the presumptions against the accused, the Courts below are right in concluding that the accused committed the offence and failed to rebut the presumptions. So far as the expression of this Court in **K.V.K.Prasad** supra concerned, there the capacity to lend is in dispute thereby it is concluded that it could not be established about business and not reflected the amount lent even in the income tax returns. Needless to say even a little difference in fact situation may tilt the result for there are no precedents on facts. Even coming to the expressions in **Shaik Ayaz** supra learned single Judge of this Court simply reiterated **Krishna Janardhan Bhat** supra and in fact the expression of **Rangappa** supra held that **Krishna Janardhan Bhat** supra is incorrect. The same is not even placed before that Court much less placed reliance. Thereby that decision has no application to the case on hand.

10. Coming even to the expressions in **M.S. Narayana Menon** and **K. Prakashan** supra, these are the expressions already considered in **Rangappa** supra of the presumptions available in favour of the complainant; the Court shall draw not only under Section 118 but also under Section 139 of the Act. Having regard to the above, the conclusions of the Courts below no way require interference.

11. Coming to the sufficiency of the sentence concerned as held by the Apex Court in **Somnath Sarka vs. Utpal Basu Mallick**⁸ and also the expressions of the Apex Court in **Damodar S.Prabhu Vs. Sayed Babalal**⁹ and **R.Vijayan Vs. Baby**¹⁰, the offence under Section 138 of the Act is between private persons, it is somewhat different to the conventional crimes against society and in these cases the Courts endeavour must be to compensate the complainant for the cheque amount to meet the compensation by awarding interest or otherwise, thereby it is provided to impose any fine or compensation up to double the amount of the cheque rather than sending the accused to jail.

12. Having regard to the above and also from the amendment to Section 143 of the Act by Act.No.55/2002 with effect from 06.02.2003 by saying notwithstanding anything contained in Cr.P.C. and Section 138 of the Act, the Court may impose fine above Rs.5,000/- with imprisonment which shall not exceed of one year. Thus imprisonment is not main criteria, but to compensate the complainant for the cheque amount with interest as the case may be. This Court thereby feels it just to modify the

⁸ 2013 (16) SCC 465

⁹ 2010 (5) SCC 663

¹⁰ 2012 (1) SCC 260

sentence of 6 months simple imprisonment with compensation of Rs.1,25,000/- to one till rising of the day by giving set off to the period undergone and also to direct to deposit or pay compensation of Rs.2,30,000/- within 2 months from date of receipt of copy of the order before trial Court and out of which Rs.30,000/- goes to the State and remaining Rs.2,00,000/- as compensation to the complainant with default sentence to undergo three months simple imprisonment, to levy and enforce under Section 421 Cr.P.C.

13. Accordingly and in the result, the Criminal Revision Case is allowed in part while confirming the conviction judgments however by modifying the sentence into till rising of the day and to pay fine of Rs.2,30,000/- of which Rs.30,000/- goes to the State and remaining to complainant and time granted to pay said compensation within two months from the date of receipt of a copy of this order. Failing which the complainant may execute the order under Section 421 Cr.P.C.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 11.04.2017
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