HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1133 of 2005

JUDGMENT:

This criminal revision case, under Sections 397 and 401 of Cr.P.C., is filed questioning the propriety and legality of the order passed in Crl.A.No.90 of 2004, dated 15-06-2005, passed by the IV Additional District and Sessions Judge, East Godavari district at Kakinada, confirming the conviction and sentence imposed by the Special Mobile Magistrate, Kakinada in C.C.No.84 of 2002, for the offence punishable under Section 138 of Negotiable Instruments Act (for short, 'the Act') and sentenced him to undergo rigorous imprisonment for six months and to pay fine of Rs.5,000/-.

The respondent/complainant filed a private complaint under Section 200 of Cr.P.C., against the petitioners/accused for the offence punishable under Section 138 of the Act alleging that the petitioners/accused borrowed an amount of Rs.50,000/- from the complainant, executed a promissory-note and agreed to repay the said amount with interest at Rs.2/- per month, either to the complainant or his order as and when demanded. As the accused did not repay the amount despite several demands made by him, the petitioners/accused insisted for payment of amount covered by the promissory-note. Thereupon A-1 issued a cheque for

Rs.50,000/- drawn on State Bank of India, C&I Division, Kakinada, on 04-07-2001, towards part payment of the amount due under the promissory-note. On its presentation for collection in State Bank of India, Jagannaikpur branch, Kakinda, on 04-07-2001, the same was returned with an endorsement that the account of the accused was closed and dishonored the cheque with cheque return memo.

On 19-07-2001, the complainant got issued a legal notice to the accused demanding them to pay the amount covered by the dishonoured cheque within the time but the accused having received the notice neither issued any reply nor paid the amount covered under the promissory-note. Therefore, the complainant having no other alternative filed complaint under Section 138 of the Act.

The learned Magistrate took the case on file, issued summons to the accused and on appearance, accused were examined under Section 251 of Cr.P.C., explaining the substances of acquisition to the accused in Telugu. They pleaded not guilty and claimed to be tried.

During trial, PWs.1 to 3 were examined and Exs.P1 to P-6 were marked on behalf of the complainant. After closure of prosecution evidence, accused were examined under Section 313 of Cr.P.C., explaining the incrimination material that appeared against them. They denied and reported no defence.

Upon hearing the arguments of both counsel and considering the material on record, the trial Court found that the cheque was issued towards discharge of part of debt due under the promissory-note and the cheque was returned on account of closure of account, therefore, it would fall under Section 138 of the Act and since the accused failed to pay the amount despite notice marked as Ex.P-3, he is guilty of offence punishable under Section 138 of the Act and convicted and sentenced him to undergo rigorous imprisonment for six months and to pay fine of Rs.5,000/- with default sentence.

Aggrieved by the conviction and sentence passed in Calendar Case, the petitioners/accused preferred Crl.A.No.90 of 2004, which was dismissed by the IV Additional Sessions Judge, Kakinada, by judgment dated 15-06-2005 confirming the conviction and sentence passed by the trial Court against the petitioners/accused for the offence punishable under Section 138 of the Act.

Aggrieved by the conviction and sentence imposed by the trial Court and confirmed by the appellate Court, the present revision is filed on various grounds.

The main ground raised before this Court is that the complaint is barred by limitation and that the trial Court did not compare the signatures on the disputed document and cheque by exercising its power under Section 73 of the Indian Evidence Act, when the petitioners/accused raised a plea that the cheque and promissory-note are forged documents and prayed to set aside the conviction and sentence imposed against the petitioners/accused.

During hearing, Sri Jaikanth, Advocate requested to adjourn the matter on behalf of Sri N.V. Anantha Krishna, learned counsel for the petitioners. But since it is an old matter of '2005', this Court is declined to adjourn the matter.

Though learned counsel for the petitioners did not advance arguments this Court can verify the material on record and pass appropriate orders as held in ***Misha Sharma v. Vinod Kumar Sharma*[1]**, wherein it is made clear that a revision petition cannot be dismissed for default. Even if the petitioner or his advocate does not appear the court shall examine the record and decide the revision on merits.

Persuaded by the law declared by Delhi High Court, I would like to decide the present revision verifying the material on record.

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[1] 1990 Cr.LJ. (NOC) 57 (Del.)

The contention of the complainant before the trial Court was that the petitioners/accused borrowed Rs.50,000/-, executed promissory-note, marked as Ex.P-6, and issued Ex.P-1-cheque in lieu of discharge of part of the debt covered under Ex.P-6. But, on its presentation it was returned with cheque return memo, marked as Ex.P-2. Thereupon a notice was issued in compliance of Section 138 (b) of the Act, on 19-07-2001, and receipt of the same was acknowledged under Ex.P-5. Therefore, the complainant complied with the procedure prescribed under Section 138 of the Act. But the petitioners herein did not comply with the legitimate demand of the complainant to pay the debt covered by the cheque.

The main plea of the petitioners/accused before the trial Court was that they never issued any cheque to the complainant and did not borrow any amount and executed promissory-note under Ex.P-6 by putting suggestions to the witnesses. PW-1 denied the suggestion.

The petitioners did not explain as to how the cheque and promissory-note were brought into existence and the reason for such alleged forgery or fabrication. If at all there is any enmity or rivalry between the parties and known to each other there is a possibility of forging the signature or fabricating the document and in fact, it was not their case at any stage of the proceedings before the trial Court that there is enmity between the parties and the accused lost cheque etc. When the petitioners/accused raised plea of forgery of signatures both on Exs.P-1 and P-6, the initial burden to prove that Exs.P-1 and P-6 were signed and executed by accused, is on the complainant.

To substantiate his contention, the complainant examined PWs.2 and 3. PW-2 – Assistant Manager, State Bank of India, Jagganiakpur, Kakinada, testified about return of Ex.P1-cheque on its presentation for collection along with cheque return memo. PW.3-Deputy Manager, State Bank of India, Kakinada Branch deposed about presentation of cheque and its return along with memo. But PW-1 is the only witness, who was present at the time of alleged promissory-note (Ex.P-6) and cheque (Ex.P-1). His evidence is consistent and the trial Court also by exercising power under Section 73 of the Indian Evidence Act compared the disputed signatures with admitted signatures of the petitioners/ accused and concluded that the signatures on Exs.P-1 and P-6 are that of the signatures of petitioners/accused. When both the parties did not take steps to refer the disputed signatures to the expert for opinion on comparison with the admitted signatures the Court has left with no option except to exercise its power under Section 73 of the Indian Evidence Act. Therefore, the trial Court rightly exercised its power under Section 73 of the Indian Evidence Act and compared the disputed signatures with the admitted signatures on the documents available with the Court and concluded that the signatures appearing on Exs.P-1 and P-6 are that of the signatures of petitioners. But, this order was questioned by the petitioners/accused before this Court. However, when power is conferred on the Court the trial Court can exercise such power. Therefore, it is not an error in the judgment.

The other contention is that the complaint is barred by limitation. In fact, the complainant issued Ex.P-3 notice on 19-07-2001. But the date of postal acknowledgement was not mentioned any where. The complaint was filed on 07-02-2002. The limitation starts from the date of acknowledging receipt of notice. But the complaint is silent with regard to the date of receipt of notice by the petitioners. When the amount covered by the cheque was not paid after notice under Section 138 of the Act, the complaint shall be filed within the time specified from the date of notice for failure of the accused to pay the amount under Section 142 of the Act. But in the present case the complaint was filed on 07-02-2002, whereas the date of offence was mentioned on 04-01-2000. The date of offence mentioned in the Calendar Case is incorrect in absence of any particulars regarding acknowledgment of receipt of notice under Ex.P-5. When notice was sent on 19-07-2001 the question of keeping the notice for four (4) months with the postal authorities without serving, normally, does not arise. Filing of complaint after five (5) months is hopelessly barred by limitation but this fact was not considered by both trial Court and appellate Court.

No doubt, the plea of limitation was not raised before the trial Court. Negotiable Instruments Act is a special law deals with such offences. But, however, Section 3 of Limitation Act permits the Court to decide the plea of limitation even though the plea of limitation was not set up by either of the parties.

As seen from the material on record, the complaint was not within the time prescribed under Section 142 of the Act after receipt of notice by the petitioners/accused issued under Section 138 of the Act. Hence, the petition is liable to be dismissed as barred by limitation. But both the trial Court and the appellate Court did not look into the aspect of limitation and committed an error.

The power of this Court is limited under Sections 397 and 401 of Cr.P.C. When both the Courts committed a manifest error on face of record, this Court can interfere with the finding and in fact though no plea of limitation was urged before the Courts below. In such case, this Court can interfere and set aside the conviction and sentence imposed by the trial Court and confirmed by the appellate Court in C.C.No.84 of 2002 and Crl.A.No.90 of 2004 respectively.

Hence, the conviction and sentence passed by trial Court and confirmed by the appellate Court in C.C.No.84 of 2002 and Crl.A.No.90 of 2004 respectively are hereby liable to be set aside, finding the petitioners/accused not guilty, holding that the complaint is hopelessly barred by limitation.

In the result, the Criminal Revision Case is allowed, setting aside the conviction and sentence passed by trial Court and confirmed by the appellate Court in C.C.No.84 of 2002 and Crl.A.No.90 of 2004 respectively, finding the petitioners/accused not guilty for the offence punishable under Section 138 of the Act. The bail bonds of A-1 shall stand cancelled.

The Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

August 24, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1133 of 2005

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