

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CrI.R.C.Nos.2440, 2441,2448 and 2449 of 2016

COMMON ORDER:

These four revisions are between the self-same revision petitioner against the self-same complainant and State of the respective cases viz; S.T.C.No.177 of 2010 (CrI.R.C.No.2440 of 2016), 186 of 2010 (CrI.R.C.No.2441 of 2016), 185 of 2010 (CrI.R.C.No.2448 of 2016) and 184 of 2010 (CrI.R.C.No. 2449 of 2016) maintained on the file of the learned Special Judicial Magistrate of First Class, Proh.& Excise offences at Kadapa for the offence u/ sec. 138 of the Negotiable Instruments Act (for short, 'the NI Act') in respect of the four independent respective cheques, no doubt all put together appears to be Rs.1,10,00,000/- (Rupees one crore ten lakhs only) and the four STCs were after conducting trial appears to be simultaneously disposed of by independent judgments of acquittal and aggrieved by the same, the complainant maintained the respective CrI.A.Nos. 104 of 2005, 106 of 2005, 103 of 2005 and 105 of 2015 on the file of the learned IV Addl. Sessions Judge, Kadapa, where the Sessions Judge, disposed of the appeals by remand and the operative portion of the respective appeals read as follows:-

CrI.R.C.No.2440 of 2016

"In the result, the criminal appeal is allowed and the judgment passed in S.T.C.No.177 of 2010 dated 24.07.2015 is set aside, directing the trial Court to decide the objections taken for marking Exs.D.1,D.3 and D.4 before passing the judgment or in the judgment; to give opportunity to complainant to produce documentary evidence relating to non-judicial stamp papers if he so desires; and to pass a judgment afresh in accordance with established principles of law, after hearing both sides counsel."

CrI.R.C.No.2441 of 2016

"In the result, the criminal appeal is allowed and the judgment passed in S.T.C.No.186 of 2010 dated 24.07.2015 is set aside, directing the learned

Magistrate to record the cross-examination of P.Ws. 1 and 2 in this case in the presence of both side counsel, hear the arguments and to pass judgment afresh.”

CrI.R.C.No.2448 of 2016

“In the result, the criminal appeal is allowed and the judgment passed in S.T.C.No.185 of 2010 dated 24.07.2015 is set aside, directing the learned Magistrate to record the cross-examination of P.Ws. 1 and 2 in this case in the presence of both side counsel, hear the arguments and to pass judgment afresh.”

CrI.R.C.No.2449 of 2016

“In the result, the criminal appeal is allowed and the judgment passed in S.T.C.No.184 of 2010 dated 24.07.2015 is set aside, directing the learned Magistrate to record the cross-examination of P.W.2 in this case in the presence of both side counsel, hear the arguments and to pass judgment afresh.”

These remand appeal judgments are the subject matter of the four revisions by the accused before this Court.

2. Heard both sides and perused the grounds of respective revisions and also impugned judgments of the Courts below and the material on record.

3. The finding of the learned Magistrate is that the source of money of the complainant not proved for the respective cheques. The reversal finding of the lower appellate Court mainly is that there is no finding as to the respective cheques issued were for legally enforceable debts or not. Undoubtedly the law is settled from the reverse onus clause where burden lies on the accused, once the accused admits the due execution of the cheques, as laid down by the Apex Court in Rangappa Vs. Sri Mohan¹, for drawing presumptions u/ sec.118 of the NI Act, and also from Section 114 of the Indian Evidence Act including of passing consideration and thus once the cheques are duly signed and admitted as issued, there is a presumption with reference to Section 139 of the N.I.Act, of cheques given are for a legally enforceable debt or other liability respectively.

¹ (2010) 11 SCC 441

4. Once such is the case, any finding is only within the parameters. What are the presumptions the Court shall draw as contemplated by Sections 118 and 139 of the N.I. Act that to be rebutted by the accused from the reverse onus clause burden from the expression supra. It is undisputedly to rebut, the burden of proof lies on the accused is by preponderance of probability, that is also clearly laid down in the expression by explaining the earlier expression in Krishna Janardhan Bhat Vs. Dattatraya G. Hegde² and other expressions.

5. In fact, in the respective remand orders, the directions include particularly for CrIRC Nos. 2441 of 2016 and 2448 of 2016 for examination of P.Ws. 1 and 2 and CrIRC No. 2449 of 2016 for examination of P.W. 2 respectively. It is from the say that whatever the cross-examination done in the matter covered by CrIRC No. 2440 of 2016 it appears stated adopted. In fact adopted cross-examination in one criminal case into another criminal case does not arise but for in some criminal cases done by one party for the other parties if at all. That is the reason why the lower appellate Court found lacunae in the manner of recording evidence by the trial Court in the other three matters. However in the matter covered by CrI.R.C.No. 2440 of 2016, there is marking of the exhibits particularly D.1, D.3 and D.4 subject to objection and there is no finding of the objection is accepted or overruled as part of the final appreciation of the evidence. No doubt the Apex Court in Bipin Shantilal Panchal Vs. State of Gujarat³ categorically held in a criminal revision that all objections but for on stamp duty or registration, are left open to decide ultimately while marking subject to objection to avoid archaic practice of instantaneous decision on objection and stalling of matters by maintaining revisions against those matters. Thus

² (2008) (2) ALT (CrI) 170(SC)

³ (2001) 3 SCC 1 : AIR 2001 SC 1158

once those are marked subject to objection even the trial Court failed to give a finding as to objection overruled or sustained in discussing the evidence, the appellate Court can equally do so, for that no remand is practically necessary. What is the wording of evidence of Section 386(a) CrPC, vis-a-vis Section 167 of the Indian Evidence Act, so far as the criminal matters concerned is only re-trial and to understand any wording used of remand as re-trial. The lower appellate Court cannot set aside the entire judgments of the trial Court for the limited purpose. Thereby the lower appellate Court's findings are liable to be set aside as unsustainable.

5. In fact, Section 391 of CrPC, even empowers from its wording that the appellate Court, if it thinks any additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate. Once such is the case, so far as the reproducing of the cross-examination of the P.Ws. 1 and 2 recorded in one case to treat or reproduce in other cases, both the parties can give consent by filing that deposition to read as part of the deposition in other three cases. Even otherwise, the appellate Court can call for and record, rather than remanding so also for deciding objection regarding the exhibition of the documents as to admissible and relevant or otherwise within its equal power u/ sec. 136 of the Indian Evidence Act.

6. Having regard to the above, all the revisions are allowed by setting aside the judgments of the lower appellate Court as unsustainable and the matters are remitted back to the lower appellate Court by restoring the trial Court's judgments of acquittal which is subject matter of the appeals before the lower appellate Court by restoring the appeals with a direction to the lower appellate Court to record any additional evidence and give its own finding including correct array of exhibits and if necessary calling for

necessary witnesses and whatever documents necessary be exhibited or re-exhibited as the case may be, preferably within 4 months from the date of receipts of this common revision orders, with a direction to both the parties by virtue of this revision order, to appear before the lower appellate Court on 03.03.2017 without any further notice, so that the lower appellate Court can proceed with according to law therefrom pursuant to observations supra. Consequently, miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:07.02.2017
Vvr

