

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.2227 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C questioning the legality and propriety of the order in CrI.A.No.14 of 2017 dated 19.05.2017 passed by the Principal Sessions Judge at Mahabubnagar, confirming the order passed by the Trial Court in C.C.No.757 of 2013 dated 24.01.2017, finding the accused not guilty for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'N.I. Act'), and acquitting the accused.

The main contention before this Court is that the Trial Court dismissed the complaint on the ground that the petitioner failed to establish that the cheque was issued in lieu of discharge of legally enforceable debt and the same was accepted by the Appellate Court and the Appellate Court did not consider that O.S.No.288 of 2013 was pending for recovery of amount based on the promissory note and in such case, the Appellate Court ought not to have dismissed the CrI.A.No.14 of 2017 and prayed to set aside the same.

The present petition is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C is limited and the High Court may exercise such power only when the Court found that there is manifest perversity in the order or the finding recorded by the Court is without any evidence or material, though section 401 of Cr.P.C. confers a kind of paternal

and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect or failure to take proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case. The discretion conferred on the High Court by Section 401 of I.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. This Court normally cannot interfere with concurrent fact findings recorded by the Courts below, only in exceptional circumstances when findings are manifestly perverse or apparently erroneous.

At the same time, while deciding an application under Section 397 Cr.P.C, this Court cannot disturb the concurrent fact findings recorded by both the Courts, in view of the limited jurisdiction that conferred on this Court.

Both the Trial Court and the Appellate Court recorded concurrent fact findings that Ex.P-1 & P-2 i.e. original cheque and cheque return memo were not issued towards discharge of legally enforceable debt either in part or in full. Therefore, those fact findings recorded by both the Courts cannot be interfered, since

the petitioner failed to show any manifest perversity or apparent error in the findings recorded by both the Courts below.

Yet, there is a clear interdict on the power of this Court to convert the acquittal into conviction under Section 401(3) Cr.P.C. Therefore, this Court cannot convert the acquittal into conviction, in view of the bar under Section 401(3) Cr.P.C. Hence, I find no ground to reverse the fact findings recorded by both the Courts below that cheque was not issued towards discharge of legally enforceable debt either in part or in full. Consequently, the criminal revision case is liable to be dismissed, as it lacks merits.

In the result, the criminal revision case is dismissed at the admission stage.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.



JUSTICE M. SATYANARAYANA MURTHY

Date:06.10.2017

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