

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.1321 of 2012

ORDER :

Against the concurrent findings of the trial Court and lower appellate Court respectively in C.C.No.235 of 2009 dated 07.07.2010 and Criminal Appeal No.113 of 2010 dated 27.06.2012, in the private complaint case filed by one G.Krishna Reddy against the accused by name, N.Srinivasa Rao, for dishonour of the cheque bearing No.160832 dated 27.02.2009 for Rs.1,00,000/- drawn on State Bank of Hyderabad, Manuguru Branch, said to have been issued by the accused in favour of the complainant, for insufficient funds and despite notice from the deemed service as unclaimed, from the cognizance taken and after examination from denial of the accusation and on trial found guilty for six months Simple Imprisonment with fine of Rs.3,000/-, confirmed by the lower appellate Court of the trial Court's conviction judgment, the revision is maintained by the accused.

2. The main contentions of the learned counsel for the petitioner/ accused are that there is no legally enforceable debt; that taking of cognizance and directing the accused to face the trial is unsustainable; that no attestors to Ex.P1-promissory note were examined; that there is no receiving of the statutory notice and in the absence of serving of statutory notice, no offence that

could be made out; that both the Courts failed to consider these vital aspects; that the cheque was drawn from Manuguru Branch and the account of the accused subsequently transferred to Kothagudem branch, by the time cheque presented, the cheque was dishonoured and hence there is no legally enforceable debt, for cheque not rooted from Kothagudem branch account of the accused and hence, to set aside the concurrent findings and acquit the accused.

3. Whereas, it is the submission of the learned counsel for the complainant reiterating the findings of the Courts below of nothing to interfere, while sitting in revision, within the limited scope against the concurrent findings.

4. Heard and perused the material on record.

5. So far as transfer of account by the accused, the account holder from one branch to another branch, there is nothing to show it is within the knowledge of the complainant. The Branch Manager, State Bank of Hyderabad, Manuguru Branch examined as DW.1 and deposed that the accused ought to have been surrendered on transfer of the account online from Manuguru to Kothagudem branch and the cheque leaves unused did not surrender and there is no bar for continuation of the said cheque leaves, even the account transferred from one branch to another branch because of the online transfer. Once such is the case, and the cheque book is in use and the cheque is rooted from the account of the accused, undisputedly, said to have been given in

favour of the complainant, as laid down by the three Judge bench of the Apex Court in Rangappa v. Sri Mohan¹, from the reverse onus clause, burden on the accused to rebut the presumption not only under Section 114 of the Evidence Act, but also under Section 139 r/w 128 explanation of Negotiable Instruments Act (for short 'the Act'), it is for the accused to discharge the burden from the presumption in favour of the complainant, the Court shall draw from its wording. Regarding the service of notice, once it is returned as unclaimed and it is not even his case that he was not at that address, at that time, even the Panchayat Secretary evidence-DW2 is not of much credence, that too, when in C.C.Alavi Haji v. Palapetty Muhammed², categorically laid down that even from any change of address of the accused of the notice not served once served the summons of the criminal case, he can discharge the debt within 15 days from the date of receipt of copy of summons and in case of failure, he shall not have any defence to say, it was not served to the present address of him, in view of the presumptions available against him, not only under Section 114 of the Evidence Act, but also under Section 27 of the General Clauses Act.

6. Having regard to the above, there is no illegality or impropriety or infirmity or incorrectness in the concurrent findings of the Courts below to interfere so far as the finding of

¹ AIR 2010 SC 1898

² (2007) 6 SCC 555

the guilty of the accused, for the dishonour of the cheque concerned.

7. However, coming to the quantum of six months Simple Imprisonment with fine of Rs.3,000/-, as held by the Apex Court in *Somnath Sarka v. Utpal Basu Mallick*³ and it is also the submission from the complainant that his endeavour for recovery of the cheque amount rather than punishment of the accused, as the cheque amount is Rs.1,00,000/- dated 27.02.2009 and Section 143 of the Act amended 55 of 2002 with non-obstante clause, irrespective of what is contained in Section 29 Cr.P.C., enables for the summary trial to be adopted irrespective of the case decided as a Calender Case from the power of the Court including under Section 259 Cr.P.C. of the power to convert summons case into summary case and summary case into summons case, as the case may be, the Court is entitled to sentence the accused not exceeding for one year and fine unlimitedly. By taking into consideration of these provisions from the propositions supra, the six months Simple Imprisonment and fine of Rs.3,000/- is converted into sentence of imprisonment till raising of the day and fine of Rs.1,60,000/-, of which Rs.20,000/- shall go to the State and Rs.1,40,000/- as compensation to the complainant, to pay by the accused, within two months from the date of receipt of copy of this order, failing which the lower Court can enforce the same for its recovery by levy under Section

³ 2014(1) ALT CrI. 145

421 r/ w 431 Cr.P.C. It is needless to say, any amount, if relates to the self same cheque, pending in a civil Court and in the event of its decree and in the event of recovery of the cheque amount supra, by virtue of this revision modified order, is required to be adjusted for recording part satisfaction and vice versa as the case may be, for the complainant to have the double benefit from the maintainability of the two parallel proceedings, one is civil and the other is criminal in nature.

8. Accordingly, the Criminal Revision Case is disposed of.

9. Miscellaneous petitions, pending if any, shall stand closed.

Date:01-03-2017

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Dr. B. SIVA SANKARA RAO, J

