

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**Crl.R.C.No.355 of 2017**

**ORDER:**

This criminal revision case is filed under Sections 397 and 401 Cr.P.C. challenging the propriety and legality of the judgment dated 07.08.2014 passed in Crl.A.No.502 of 2013 by the Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad confirming the judgment dated 14.02.2012 in C.C.No.223 of 2009 passed by the XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate, Hyderabad, against the 2<sup>nd</sup> respondent finding him not guilty for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'the Act').

2. The main contention raised before this Court in the revision is that there is a presumption that the cheque was issued in lieu of discharge of whole or part of the legally enforceable debt. But the trial Court and appellate Court did not accept this contention and dismissed the complaint and the same was affirmed by the appellate Court acquitting the 2<sup>nd</sup> respondent for the offence punishable under Section 138 of the Act.

3. During hearing, learned counsel for the petitioner repeated the same ground and drawn the attention of this Court by placing reliance on **T.Vasanthkumar v Vijayakumari**<sup>1</sup>.

4. Whereas, learned counsel for the 2<sup>nd</sup> respondent contended that the scope of revision under Sections 397(1) and 401 of Cr.P.C.

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<sup>1</sup> AIR 2015 SC 2240

is limited and this Court cannot convert acquittal into conviction in view of law bar under Section 401(3) of Cr.P.C., hence, this Court normally cannot interfere with the findings of the Courts below and requested this Court to confirm the judgments passed by the Courts below.

5. The petitioner filed complaint for the offence punishable under Section 138 of the Act alleging that the petitioner advanced Rs.20 lakhs to the 2<sup>nd</sup> respondent contending that father in law of the petitioner arranged the said amount for construction of house as financial assistance and having come to know about the same, in the month of May, 2008, the 2<sup>nd</sup> respondent borrowed the same to meet his urgent financial need, agreeing to repay the same within two months with interest @ 24% per annum. In lieu of discharge of the debt due, the 2<sup>nd</sup> respondent issued four cheques bearing Nos.274246, dated 14.07.2008 for Rs.4 lakhs, 411827, dated 14.07.2008 for Rs.5 lakhs, 411828, dated 14.07.2008 for Rs.5 lakhs and 411829, dated 14.07.2008 for Rs.6 lakhs and later the 2<sup>nd</sup> respondent requested the petitioner not to present the said cheques for realization. However, the said cheques were presented on different dates and they were dishonoured and after completion of necessary formalities required under Section 138 of the Act, filed complaint for the offence punishable under Section 138 of the Act.

6. During trial, the complainant was examined as PW.1 besides examining one Srikanth as PW.2 and marked Exs.P.1 to P.15 and after closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C. explaining the incriminating circumstances that

appeared against him, he denied the same and reported no evidence, but marked Ex.D1 and Ex.X.1.

7. Upon hearing argument of both the counsel, the trial Court held that the cheques were not issued towards dishonour of legally enforceable debt or liability and dismissed the complaint, finding the accused not guilty for the offence punishable under Section 138 of the Act.

8. Aggrieved by the acquittal of the 2<sup>nd</sup> respondent under impugned calendar judgment, the petitioner preferred an appeal in CrI.A.No.502 of 2013 which ended in dismissal by judgment dated 07.08.2014 confirming the acquittal order passed by the trial Court under impugned calendar judgment.

9. Now the present revision is filed on the grounds stated above and during hearing, learned counsel for the petitioner relied on judgment of the Apex Court in **T.Vasanthkumar's case** referred supra. Wherein it was held that the burden is on the accused to disprove cheque or existence of any legally recoverable debt or liability and the accused had knowledge of cheque being presented to bank, or else how would accused have instructed her banker to stop payment. Therefore, the presumption under Section 139 of the Act is in favour of the complainant. There is no doubt about the presumption available under Section 139 of the Act in favour of the complainant that the cheque was issued in favour of the complainant to discharge legally enforceable debt. However, this presumption is rebuttable and the 2<sup>nd</sup> respondent can rebut such presumption by examining independent witnesses or by eliciting

anything in the cross examination of complainant's witnesses. The presumption will operate only when the cheques were admitted. Thus, issue of all the cheques was proved. The Apex Court at para 10 observed that the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability. To this effect, the accused has come up with a story that the cheque was given to the complainant long back in 1999 as a security to a loan; the loan was repaid but the complainant did not return the issued as security cheque. According to the accused, it was that very cheque was used by the complainant to implicate the accused. However, it may be noted that the cheque was dishonoured because the payment was stopped and not for any other reason. This implies that the accused had knowledge of the cheque being presented to the bank, or else how would the accused have instructed her banker to stop the payment. Thus, the story brought out by the accused is unworthy of credit, apart from being unsupported by any evidence.

10. The facts of the above judgment are totally different to the present case. This case is based on the facts elicited in the cross examination of PWs1 and 2 and other material available on record, the trial Court disbelieved the same and concluded that the cheques were not issued in lieu of whole or part, of any legally enforceable debt and the same was confirmed by the appellate Court. Normally, this Court would not interfere with the fact findings recorded by the Courts below while exercising power under Sections 397 and 401 of Cr.P.C.

11. When the findings are concurrent and they are based on proper appreciation of evidence, there is no scope for interference, but where the conscience of the Court is satisfied that in the broad interest of justice acquittal is not sustainable, the revisional Court has power to interfere and rectify the wrong even if the findings are concurrent. When the miscarriage of justice arises because the judgment is based on no evidence or because it over looks vital evidence or because it has not considered the evidence in its true perspective the revisional Court will and must interfere though the findings are concurrent. The concurrent findings of fact, if not unreasonable or perverse, cannot be interfered within revision while exercising power under Section 397 Cr.P.C.

12. But here in this case, perverse findings recorded by the Courts below based on presumption under Section 139 of the Act. But the trial Court and appellate Court recorded findings that the presumption was dispelled by eliciting facts in the cross examination of PWs.1 and 2 and therefore, it is difficult to hold that the concurrent fact findings recorded by the Courts below are perverse. The trial Court and appellate Court while recording concurrent findings in favour of the accused for the offence punishable under Section 138 of the Act and such acquittal cannot be converted into conviction in view of the interdict contained in Sub-section 3 of Section 401 Cr.P.C. and the Court may order retrial of the case only in exceptional circumstances. But no such exceptional circumstances are brought to the notice of this Court to order retrial of the case. Therefore, I find no grounds to interfere with the concurrent fact findings of both Courts below and

consequently, the criminal revision case is liable to be dismissed at the admission stage.

13. Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

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**M. SATYANARAYANA MURTHY J**

Date: 12.10.2017  
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