THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2564 OF 2016

JUDGMENT:

When there was no representation for the petitioner on 01.11.2017 and even earlier thereto, which dates were also noted in the proceedings dated 01.11.2017, the present Criminal Revision Case was directed to be listed on 02.11.2017 and, accordingly, listed on 02.11.2017. But, on 02.11.2017, there was no representation and, hence, listed to this day. Even today, there is no representation for the revision petitioner.

2. The revision petitioner is accused before the courts below.

3. By judgment dated 31.03.2015 in CC.No.591 of 2013 (Old CC.No.822 of 2013), the learned XXV Special Magistrate, Hyderabad, convicted the accused under Section 255 (2) Cr.P.C for the offence punishable under Section 138 of the Negotiable Instruments Act (for short, 'the Act') with Rigorous Imprisonment for one year and fine of Rs.5,000/-, with default sentence of Simple Imprisonment of three months. When the accused preferred Criminal Appeal No.276 of 2015, the learned II-Additional Metropolitan Magistrate, by its judgment dated 29.08.2016, confirmed the conviction recorded and sentence of imprisonment inflicted on the petitioner and also the fine imposed on him. Of course, it appears that no compensation was awarded so far as the dishonoured cheque is

concerned. Having got aggrieved, the accused has moved this Court by filing the present Criminal Revision Case.

4. Though, the present revision was filed in 2016, it was taken up on 14.10.2016 for the first time and later adjourned number of times, as there was no representation at all. That has been the reason why it was ordered to be listed by the Registry under the caption ‘for orders’ and continuing as such since 24.10.2017. Therefore, this Court is inclined to proceed with on merits and dispose of the present Criminal Revision Case.

5. The substantial ground raised in the revision is that the complaint is tainted with some cryptic averments assorted with irrevocable contradictions, but, some how, the learned appellate court did not properly appreciate the same. The second ground is that PW.1 categorically admitted that the amount alleged to have been lent has not been reflected in his income tax account and, as such, the alleged amount is deemed to have been unaccountable and, as such, it does not have any legality, which cannot be enforceable by the provisions of law, in view of the legal principles laid down by the Honourable Apex Court that, law should not be used for misuse of creating perpetually in illegal amount, which is not the purpose of Constitution of India, and no court should allow any illegal transaction legally. The other grounds all relate to the evidence of PW.1.

In one of the grounds raised in the revision, it is stated that Ex.P3-notice was not at all served on the accused, which was admitted by the complainant during the course of his cross-examination, and the learned Magistrate failed to appreciate the said fact, which is mandatory, and, therefore, the courts below erred in appreciating the evidence and recorded conviction and sentence of imprisonment. These have been the grounds urged by the revision petitioner in the revision.

6. When examined carefully, the grounds agitated in the revision do not relate to either legality or propriety of consistent findings or the concurrent findings recorded by the courts below. A perusal of the judgment of the lower appellate court would show that the appellate court has comprehensively dealt with the evidence of the witnesses and, in fact, the evidence of DW.2, the Assistant Manager, who was summoned and examined on behalf of the revision petitioner, reflects that the accused himself signed on Ex.P1 – cheque, but the accused, who was examined as DW.1, did not even come up with any explanation as to how the cheque signed by him came into custody of the complainant. That has been the vital probability taken into consideration by the appellate court and then drawn the presumption inlaid by the provisions of Section 138 of the Act and, thereby, held that the trial Court recorded conviction on proper appreciation of evidence on record and imposed the sentence of Rigorous Imprisonment of one year and fine of Rs.5,000/-.

7. As already mentioned in the above, it cannot be said that Ex.P1 – cheque is cryptic, unless in what manner it is cryptic was

elicited through the cross-examination of PW.1. Though, the revision petitioner - accused has taken the stand that the mandatory notice was not served and there has been no compliance of the said condition, still, nothing is brought out in the cross-examination of PW.1 to hold otherwise. The other grounds taken by the revision petitioner are not worthy of acceptance, more particularly, when concurrent findings have been recorded. Thus, when findings recorded by the courts below do not suffer from vice of perversity nor manifest illegality, this Court, sitting in revision, cannot interdict or interfere with the findings recorded. Thus, there is no merit in the Criminal Revision Case.

8. Accordingly, the Criminal Revision Case is dismissed confirming the conviction recorded and sentence of imprisonment inflicted on the petitioner and also the fine imposed by the Courts below.

9. In Crl.RC.MP.No.3958 of 2016 filed for suspension of the sentence and consequential release of the petitioner on bail, learned counsel for the petitioner has shown that the petitioner was lodged in Central Prison, Chenchalguda, Hyderabad. As seen from the proceeding sheet, no orders are passed in the said Crl.RC.MP.No.3958 of 2016. In case the petitioner served the sentence of imprisonment inflicted on him, there is no need to take further action. If he has not served the sentence of imprisonment inflicted on him, the learned XXV Special Magistrate, Hyderabad, by verifying the records, shall

secure the presence of the petitioner and put him in prison to serve the sentence of imprisonment.

10. Miscellaneous Petitions, if any, pending in the revision case shall stand closed.

JUSTICE SHANKAR NARAYANA

03rd November, 2017
Note: Issue CC by 06.11.2017.
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