

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.801 of 2005

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'), is filed challenging the Judgment, dated 11.04.2004, in CrI.A.No.291 of 2004 passed by the Special Judge for trial of offences under Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act-cum-VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Secunderabad, whereby, the learned Sessions Judge dismissed the appeal confirming the Judgment, dated 04.10.2004, passed in C.C.No.1070 of 2002 on the file of X Metropolitan Magistrate, Secunderabad.

2. For the sake of convenience, the parties will be referred to, as they arrayed before the trial Court.

3. The grounds raised in the criminal revision case are that the trial Court recorded conviction on the assumptions and presumptions without any material; that apart, the trial Court failed to give an opportunity to the accused to disprove Exs.P.1 to P.4 as there is circumstantial evidence to rebut the testimony of witnesses with regard to attestors in Exs.P.1 and P.2; in addition to that the finding of fact recorded by trial Court is erroneous, without any evidence and prayed to set aside the judgment.

4. None appeared before this Court during hearing. However, this Court cannot dismiss the revision case filed under Sections 397 and 401 Cr.P.C., for default, but, decide such criminal revision case based on the material available on record in view of the Judgment of the Delhi

High Court reported in ***Misha Sharma v. Vinod Kumar Sharma***¹, wherein it is held that the revision petition cannot be dismissed for default even if the petitioner or Advocate does not appear before the Court. The Court can examine the record and decide the revision case on merits. Therefore, persuaded by the principle laid down in the above Judgment, this Court decides to dispose of the present revision case based on the material available on record.

5. The complainant-G.Saibaba, filed a private complaint under Section 200 Cr.P.C., against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') alleging that A.2 borrowed an amount of Rs.2,00,000/- from the complainant on 13.05.2002 with a promise to repay the same; that subsequently, in lieu of discharge of the said debt, accused No.2 issued a cheque on 28.06.2002 for Rs.2,00,000/-, and when the said cheque was presented in the bank for collection, it was dishonoured on the ground of 'insufficient funds' with a Cheque return memo-Ex.P.4; that thereupon, a legal notice under Ex.P.5 was issued, which was acknowledged by the accused, but, failed to pay the amount covered by the cheque. Hence the private complaint.

6. The case was taken on file by the Judicial Magistrate of First Class. Upon securing the presence of the accused and on compliance of Section 207 Cr.P.C., the accused were examined under Section 251 Cr.P.C., explaining the gist of acquisition made against them for the offence punishable under Section 138 of the Act, they pleaded not guilty and claimed to be tried.

¹ 1990 Cr.LJ. (NOC) 57 (Del.)

7. During trial, on behalf of the prosecution, the complainant himself examined as P.W.1 and got marked Exs.P.1 to P.8.

8. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C., explaining the incriminating the material appeared against them, but they denied the same and reported no evidence.

9. Upon hearing argument of both sides, the trial Court found the accused guilty for the offence punishable under Section 138 of the Act and accordingly, convicted and sentenced to undergo simple imprisonment for three months and pay fine of Rs.4000/- with default sentence.

10. Aggrieved by the conviction and sentence passed by the trial Court, an appeal in CrI.A.No.291 of 2004 was filed, which was ended in dismissal by Judgment, dated 11.04.2005, which is impugned in this revision case.

11. It is the case of the petitioners that no opportunity was given to rebut the presumption and disprove Exs.P.1 to P.4. Admittedly, sufficient opportunity was given to the petitioners to cross-examine P.W.1 and accordingly, cross-examined him, but nothing was elicited in his cross-examination to disprove Exs.P.1 to P.4. Now, it is not open to the petitioners to contend before this Court that no opportunity was afforded to them to adduce evidence to disprove Exs.P.1 to P.4. Ex.P.1 is the promissory note, dated 13.05.2002, whereunder A.2 borrowed an amount of Rs.2,00,000/- agreeing to repay the same with interest as and when demanded by the complainant. When the petitioners admitted about execution of Ex.P.1-promissory note, the Court shall draw a presumption under Section 118 of the N.I. Act that the

promissory note was supported by consideration. Apart from that Ex.P.3 was issued and it was returned on its presentation with a Memo-Ex.P.4. Therefore, sufficient opportunity was given to the petitioners to disprove execution of Exs.P.1, P.2 and issuance of Ex.P.3. Before the trial Court or even before the appellate Court, the petitioners did not file any petition under Section 391 Cr.P.C., seeking leave of the Court to adduce additional evidence. When the petitioners failed to adduce additional evidence before the trial Court as well as the appellate Court, such plea is not open to them at the stage of revision. Therefore, the contention of no opportunity was afforded to the petitioners to rebut the evidence of P.W.1 and disprove Exs.P.1 to P.4 is without any substance.

12. When the trial Court and the appellate Court recorded a fact finding, this Court cannot interfere with the same by exercising power under Section 401 Cr.P.C., since the power of this Court is limited. As a general rule, this Court shall not, in revision, interfere with the finding of fact and specially where there are concurrent findings of fact of the Courts below. But, in special and exceptional circumstances, this Court is entitled to go into the question of fact and do justice, though the power should be rarely exercised as held by the Apex Court in **SPS Jayam & Co. v. Nehrusadan**². In revision, the High Court must accept the question of fact recorded by Subordinate Courts unless finding is manifestly perverse or apparently erroneous. The power of interference is to be exercised most sparingly and only when there appears to have been a miscarriage of justice or perverse and unreasonable decision as held in **Chandrika Prasad v. S.Mohammad Jafar**³.

² 1977 SC 1621

³ 1940 CrL.J.891

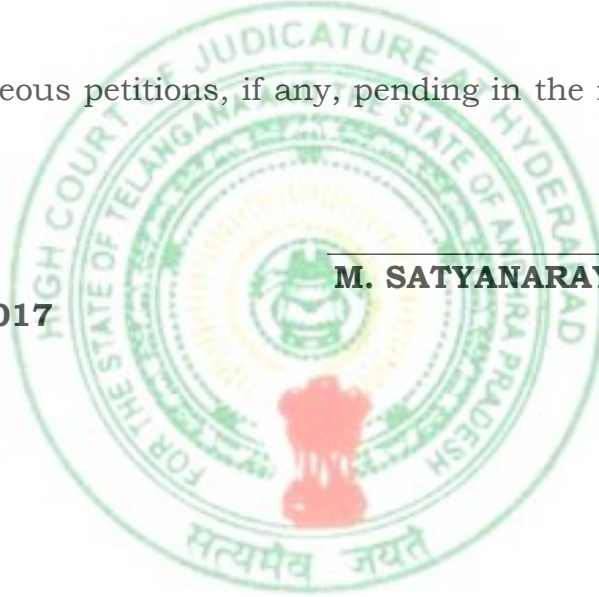
13. In the present facts of the case, there are no such special circumstances to interfere with the concurrent findings of fact recorded by Courts below upholding the guilt of the accused for the offence punishable under Section 138 of the NI Act. Therefore, I find no ground warranting interference with the concurrent findings recorded by the trial Court and the appellate Court, the Criminal Revision Case is liable to be dismissed as devoid of merits.

14. In the result, the Criminal Revision Case is dismissed confirming the conviction and sentence passed by the trial Court and confirmed by the appellate Court in CrI.A.No.291 of 2004, dated 11.04.2005.

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

AUGUST 17, 2017
YVL

M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date: 17.08.2017

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