THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.R.C. NO.2327 OF 2017

ORDER:

This criminal revision case is filed under Section Sections 397 and 401 of Cr.P.C. challenging the judgment dt.14.07.2017 in Crl.A.No.1017 of 2014 passed by the Addl.Metropolitan Sessions Judge for Trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge, Hyderabad confirming the conviction and sentence passed by the XV Special Magistrate, Hyderabad in C.C.No.305 of 2013 (Old CC No.922/2013) for the offence punishable under Section 138 of Negotiable Instruments Act finding him guilty.

2. The petitioner is the accused before the XV Special Magistrate, Hyderabad in C.C.No.305 of 2013 (Old CC No.922/2013) and the second respondent is the complainant. The second respondent filed complaint before the XV Special Magistrate, Hyderabad alleging that due to acquaintance with the family of the petitioner since long time, the petitioner/accused availed loan of Rs.4 lakhs on 05.02.2011 to construct plot/house. While receiving hand loan, the petitioner made the complainant believed that he will repay the same within 9 months along with interest @2% per month and after completion of 9 months period, the complainant demanded the petitioner to repay the amount together with interest. But, he postponed the same on one pretext or the other and finally the petitioner issued two cheques bearing Nos.363213 and 363214 dt.7.3.2012 for Rs.2 lakhs each drawn on ING Vysya Bank Limited, Himayathnagar Branch, Hyderabad in lieu of discharge of hand loan.

3. While issuing two cheques, the petitioner also made the complainant to believe that the cheques shall be honoured and the

petitioner will repay the interest as early as possible as per understanding. On presentation of cheques for collection, the cheques were returned dishonoured with an endorsement as "account closed/transferred to aaaa" together with cheque return memo dt.14.07.2012. Even before that also the cheques were returned with the same reason on 9.03.2012 and no information was received from the accused and the accused assured and made her to believe that the account was closed on technical reasons and that the banker has returned and the said technical reasons have been clarified and that the account will be in operation soon and requested to represent the said cheques. At the request of the petitioner, the complainant represented the cheques for collection, but again the cheques were dishonoured and returned on 14.7.2012 on the same ground. Since the petitioner did not take steps to pay the amount covered by cheques, the second respondent issued legal notice on 25.7.2012 through advocate by registered post with acknowledgement due calling upon the petitioner to pay the amount covered by two cheques within 15 days from the date of receipt of notice. The receipt of notice was acknowledged by the petitioner, but he neither replied nor paid the amount covered by the cheques within the specified time. Hence, the complaint.

4. The case was taken on file by the magistrate and on securing the presence of the petitioner, he was examined under Section 251 Cr.P.C., explained the gist of accusation, he pleaded not guilty and claimed to be tried.

5. During trial, PW.1 was examined and marked Exs:P-1 to 7 on behalf of the second respondent and on behalf of petitioner DW-1 was examined. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C. explaining the incriminating

circumstances that are appearing against him, he denied the same and examined himself as DW-1.

6. Upon hearing argument of both the counsel and considering the oral and documentary evidence on record, the trial court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act, convicted and sentenced him to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.5,000/- with default sentence.

7. Aggrieved by the conviction and sentence passed by the learned magistrate in C.C.No.305 of 2013 dt.24.09.2014, the petitioner preferred an appeal in Crl.A.No.1017 of 2014 and the same was dismissed by the Addl.Metropolitan Sessions Judge for Trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge, Hyderabad confirming the conviction and sentence passed by the XV Special Magistrate, Hyderabad.

8. Aggrieved by the concurrent finding recorded by both the courts below against the petitioner, the present revision is filed on two grounds. The second respondent is only housewife and without any source of income, how she advanced hand loan of Rs.4 lakhs to a stranger, cannot be believed and thereby the trial court and appellate court wrongly came to the conclusion that when the petitioner admitted the signatures on the cheques, the drawer of the cheque is liable for punishment under Section 138 of N.I. Act and it is an error apparent on the face of the record. Finally, it is contended that the courts below did not appreciate the evidence to prove lending of amount of Rs.4 lakhs and committed serious error in finding the accused guilty for the offence punishable under Section 138 of N.I. Act.

9. During hearing, the learned counsel for the petitioner did not advance any argument and did not represent the matter though the matter is listed under the caption 'for orders'. Despite it, the learned counsel neither advanced the arguments nor got it represented. The present revision is filed on various grounds. However, in criminal revision case, this court even in the absence of counsel, can peruse the record and pass appropriate orders. Therefore, having no other alternative except to dispose of the revision by verifying the record available, as per decision in NISHA SHARMA AND OTHERS v. VINOD KUMAR SHARMA[1].

10. Persuaded by the judgment of Delhi High Court, without waiting for the counsel or the petitioner and verifying material on record, I would like to decide the revision pending before this court.

11. The first and foremost contention raised in the grounds of revision is that the petitioner issued only blank signed cheques and those cheques were misused by the second respondent and filed false complaint. No doubt, according to the defence set up by the petitioner the blank signed cheques were issued, but both the courts did not accept this contention.

12. When once a document was duly signed and delivered to the plaintiff-transferor, it is nothing but an inchoate instrument under Section 20 of N.I. Act and it reads thus:

> *"20. Inchoate stamped instruments:- Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity*

---

[1] 1990 Crl.L.J. (NOC) 57 (Delhi)

in which he signed the same, to any holder in due course for such amount. "

13. So, a bare reading of Section 20 of N.I. Act, 1881, the holder is competent to make or complete the instrument, when the negotiable instrument is handed over duly signing on it, it also implied that the holder is authorized to fill the document.

14. In the Division Bench judgment of this reported in Duggineni Seshagiri Rao Vs. Kothapalli Venkateswara Rao[2], it is held as follows:

> *"Four things are necessary for an instrument to be a promissory note: 1) It should be in writing; 2) It should have an unconditional undertaking; 3) It should be signed by the maker; and 4) it should be in favour of ceratin person or to a bearer.*
>
> *Section 20 makes inchoate stamped instruments legal instruments. The dictionary meaning of 'inchoate' is 'incomplete'. So, incomplete stamped instruments are as good as the instruments mentioned in Section 4 of the Act. Even if one looks to the definition of the 'promissory note' under Section 4, one would find that the requirements for making an instrument a promissory note do not contain the requirement of naming a person, it can be given in favour of a certain person or to bearer of the instrument. That makes it clear that, one who is holding the document is the person who derives rights out of that instrument. In other words, it would mean that the document with first three requirements as stated above, should be delivered to the payee, once it is delivered it becomes a promissory note. Name and other particulars can be filled up even at a later stage. When one reads Section 4 in conjunction with Sections 20 and 42 that is the only interpretation that can be placed on the meaning of 'promissory note' under Section 4 of the Act. Section 20 lays down that when a person signs and delivers to another person a paper stamped in accordance with law relating to negotiable instrument it becomes a negotiable instrument even if it is wholly blank or written with incomplete particulars. Similarly, Section 42 even recognizes instrument issued in the name of fictitious person to be a valid instrument. Although Section 42 relates to bills but it also accepts that an acceptor of a bill of exchange even if it was in drawn in a fictitious name it would create a genuine claim in favour of the holder. Therefore, even if a negotiable instrument is incomplete it*

[2] 2001(6) ALT95 (D.B.)

> *would be a legal instrument provided it satisfies the first three conditions.*
>
> *Holder of the instrument becomes a bearer of the instrument."*

Their Lordships further held as follows:

> *"The plaintiff had been able to prove the execution of the document. On the other had, if the document was disputed or doubted the onus was on the defendant to show that the document was a forgery because a presumption is in favour of plaintiff under Section 118 of the Negotiable Instruments Act."*

15. A similar question came before the Division Bench of Punjab and Haryana reported in Sukhminder Singh Vs. Nirbhai Singh[3]

16. In this regard, I am also persuaded by an unreported judgment of the Hon'ble High Court of Karnataka in C.R.P.Nos.1574, 1590 and 1591 of 1995, dated 01-10-1999 [H.Maregowda and etc. Vs. Thippamma and others], wherein His Lordship Justice T.N.Vallinayagam held as follows:

> *"A reading of Section 20 of the Negotiable Instruments Act which is extracted above will reveal that the words used are either wholly blank or having written thereon an incomplete negotiable instrument. Thus, even if a blank promissory note is given, it cannot be taken as a defence to avoid a decree based on such instrument, once it is found that the document produced before the Court satisfies the requirements of a promissory note within the meaning of the Negotiable Instruments Act. The instrument may be wholly blank or incomplete in particular; in either case, the holder has the authority to make or complete the instrument as a negotiable one."*

17. In the judgment of Apex Court in T. NAGAPPA v. Y.R. MURALIDHAR[4], the Division Bench of the Apex Court held that when a contention has been raised that the complainant has misused the cheque, even in a case where a presumption can be raised under Section 118(a) or 139 of the said Act, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof. As the law places the burden on

---

[3] AIR 2013 P & H 77
[4] AIR 2008 SC 2010

the accused, he must be given an opportunity to discharge it. An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognized by the Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure.

18. There is a presumption under Section 139 of Negotiable Instruments Act. According to it, the Court shall presume unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, or any debt or other liability. When once the cheque is issued by the drawer a presumption under Section 139 of Negotiable Instruments Act in favour of the holder must follow. The Apex Court in "*M/s Modi Cements v. Kuchil Kumar Nandi*[5]" held that when the cheque was issued by the drawer, a presumption shall be drawn and issuing instructions to stop payment would amount to offence punishable under Section 138 of Negotiable Instruments Act.

19. The presumption under Section 139 of Negotiable Instruments Act is a rebuttable presumption and such presumption can be rebutted either by eliciting something in the cross-examination of prosecution witnesses or by adducing independent evidence to dispel the statutory presumption contained under Section 139 of Negotiable Instruments Act.

20. In view of the judgment of the Apex Court, the holder of cheque is entitled to fill the blanks in the cheque and utilise the same. Therefore, such defence is no more available to the petitioner.

21. The other contention is that the second respondent who is house wife has no capacity to lend such huge amount. Before the trial court

---

[5] AIR 1998 SC 1057

and appellate court, the same contention was urged but both the courts below held that the second respondent is having sufficient means to advance Rs.4 lakhs.

22. PW-1 in her evidence asserted that she advanced Rs.4 lakhs as hand loan and DW-1 in his cross examination denied taking of Rs.4 lakhs from the complainant and also denied issue of cheque in favour of the complainant. It is the case of the petitioner that one Sudhakar Sharma obtained loan from the financier by name Ravi Yadav and in that connection, DW-1 stood as guarantor for Sudhakar Sharma and the said Ravi Yadav obtained blank cheques from DW-1 towards repayment of the said amount. The petitioner contends that he did not borrow money from the second respondent, but the second respondent got foisted false case. This contention was disbelieved by both the courts below assigning specific reasons. Therefore, issue of blank signed cheques is not in dispute and in view of the law declared by the Division Bench and Apex Court, the holder of cheque is competent to utilise the cheque and draw the amount in view of authorisation given to him, in view of Section 20 of the N.I. Act. When once issue of cheque is proved or admitted, a presumption under Section 139 of the N.I. Act would arise and the court shall draw an inference that the cheque was issued in lieu of discharge of legally enforceable liability or debt and the trial court by placing reliance on RANGAPPA v. SRI MOHAN[6] drawn the presumption under Section 139 of the N.I. Act and such presumption includes the existence of legally enforceable debt or liability. On the basis of presumption, the court below concluded that the petitioner issued cheques in lieu of discharge of legally enforceable debt due to the second respondent as the petitioner is the drawer of the cheque and therefore when the cheques were presented for collection, they were dishonoured for one reason or

---

[6] (2010) 11 SCC 441

the other stated above. Even after issuing notice in compliance of Clause (b) to Section 138 of N.I. Act, the petitioner had neither paid the amount covered by dishonoured cheques nor replied putting-forth his specific defence. But, suddenly invented specific defence during cross-examination of the witnesses. However, the same was disbelieved by both the courts below. Hence, this court cannot interfere with the concurrent fact finding recorded by both the courts below and I find no manifest perversity or apparent error warranting interference of this court while exercising power under Sections 397 and 401 Cr.P.C.

23. In view of my foregoing discussion, I find that the revision is devoid of merits and deserves to be dismissed.

24. IN THE RESULT, the criminal revision case is dismissed at the stage of admission.

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

M.SATYANARAYANA MURTHY,J

DATE:08-09-2017
ccm

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.R.C. NO.2327 OF 2017

Date:08.09.2017

ccm