

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL REVISION CASE No.81 of 2006

ORDER:

The present Criminal Revision Case is directed against the conviction recorded against the revision petitioner-accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'the Act') and the sentence of simple imprisonment for three months and a fine of Rs.3000/- with default sentence of simple imprisonment for two months inflicted by the learned X Metropolitan Magistrate, Secunderabad, by judgment dated 11.02.2005 in C.C.No.1609 of 02001, and affirmed by the learned Special Judge for the Trial of Offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Secunderabad, in Criminal Appeal No.61 of 2005, dated 06.10.2005.

In the present revision case, the revision petitioner approached this Court on 17.01.2006 on which date the sentence imposed on him was suspended granting bail to him. Later, on 07.11.2017, at the request of the learned counsel for the revision petitioner, the matter was adjourned to 09.11.2017. On 09.11.2017 there was no representation for the revision petitioner and, in fact, it was even listed in advance list and then in regular list. Hence, the Registry was directed to list the matter under the caption 'for orders'. Again on 16.11.2017 when the matter was called there was no representation in the morning session. Even in the afternoon

session, at 3.00 p.m., there was no representation and again when it was called at 3.30 p.m., there was no representation and, therefore, adjourned to this day to afford an opportunity of being heard to the revision petitioner. Still, the revision petitioner failed to avail the opportunity afforded to him.

The present revision case relates to the year 2006, the Criminal Appeal relates to the year 2005 and the Calendar Case relates to the year 2001. At the outset, it is to observe that concurrent findings have been staring at the revision petitioner. When looked at the grounds of revision what all averred by the revision petitioner is that based on the presumptions and assumptions, the findings have been recorded and the Courts below failed to adhere to the basic principle of proof beyond reasonable doubt. Except the said ground, no specific ground has been mentioned in the grounds of revision whether there has been any perversity in the findings recorded by the Courts below.

Turning to a few facts herein, the revision petitioner alleged to have borrowed a sum of Rs.1,00,000/- on 31.05.1998, by executing a promissory note and a receipt from the accused, who is none other than the brother-in-law of the first respondent-complainant, and the said borrowal was not denied. D.W.1-revision petitioner categorically admitted the fact that he has borrowed a sum of Rs.1,00,000/- from P.W.1 as hand loan. The usual facts relating to issue of cheque-Ex.P1, dated 30.04.2001, drawn

on ICICI bank for a sum of Rs.1,00,000/- in discharge of the liability and the same being dishonoured and the issuance of statutory notices need no advertence.

The trial Court, having examined the complainant as P.W.1 and marking Exs.P.1 to P6 and the revision petitioner as D.W.1 and marking Exs.B.1 to B4, arrived at the findings that the cheque was issued in discharge of a legally enforceable debt or liability, that the drawer on receipt of notice had not paid the cheque amount within fifteen days, that the mandatory requirement of issuance of notice was complied with on presentation of cheque within six months, and thereby held that the complainant proved his case and came to the conclusion that the revision petitioner was guilty for the offence punishable under Section 138 of the Act. When the only factor which was weighed with the learned Magistrate in inflicting three months simple imprisonment, has been that both of them are inter-related and even civil suits were also pending between them, and the revision petitioner was not present on the date of his examination, therefore, he took a lenient view and imposed simple imprisonment for three months and to pay fine of Rs.3000/- for the said offence.

The learned Appellate Court, on its independent analysis of evidence on record, rendered findings holding that the findings recorded by the learned Magistrate do not warrant interference as they were not legally infirm and,

thereby, affirmed the conviction and sentence of imprisonment inflicted on the revision petitioner, including the fine.

As already observed supra, no concrete ground has been agitated in the grounds of the revision touching the findings recorded by the Courts below. While the mandatory requirements have been complied with, under Section 138 of the Act, and the presumption arising in favour of the complainant, which stood rebutted as could be seen from the evidence of D.W.1 besides D.W.1 admitting the borrowal of Rs.1,00,000/-, the findings recorded by the Courts below cannot be faulted. Thus there is no legal infirmity in the said findings nor the findings can be construed as utterly perverse.

Thus, holding that there is no merit, the present Criminal Revision Case is dismissed confirming the conviction recorded against the revision petitioner for the offence punishable under Section 138 of the Act and the sentence of simple imprisonment of three months as well as fine of Rs.3000/- imposed on him. The revision petitioner is directed to surrender before the learned X Metropolitan Magistrate, Secunderabad by 21.12.2017. In case he fails to surrender, the learned Magistrate shall secure the presence of the revision petitioner and put him in prison to serve out the sentence of imprisonment inflicted on him.

As a sequel thereto, miscellaneous applications, if any pending in the Revision Case, stand closed.

A.SHANKAR NARAYANA,J

23rd November, 2017
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