

**THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**Criminal Revision Case No.696 of 2006**

**JUDGMENT:**

The appellant-accused is the revision petitioner in the present Criminal Revision Case. Aggrieved over the conviction recorded by the learned VII-Metropolitan Magistrate, Visakhapatnam in C.C. No.220 of 2002 by his judgment dated 17.12.2003 under Section 255 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short, 'N.I. Act') and sentence of simple imprisonment for seven months and to pay fine of Rs.5,000/- (Rupees Five thousand only) with default sentence of simple imprisonment of three months, which was confirmed by the learned IV-Additional Sessions Judge, Visakhapatnam, by his judgment dated 28.02.2006 in Criminal Appeal No.135 of 2003, he preferred the present Revision Case under Sections 397 and 401 of Cr.P.C. In fact, a duty is cast on the revision petitioner even to file certified copy of judgment of the trial Court, but neither the certified copy nor even a copy thereof is filed along with material papers.

2. The present Criminal Revision Case came up for the first time on 13.4.2006, on which day the sentence of imprisonment imposed on the petitioner was suspended by way of granting bail by imposing certain conditions. Thereafter, it was admitted on 18.4.2006. Later, the Criminal Revision Case came up again on 4.12.2017. On that day, there was no representation for the revision

petitioner, and, therefore, Registry was directed to list the Revision under the caption 'For Orders' on 8.12.2017. Thereafter, again it was listed on 8.12.2017, 12.12.2017 and 13.12.2017, which was even passed over during morning session and having waited till 4.25 p.m. on every date from 8.12.2017 onwards, and, as there was no representation for the revision petitioner, taken up for disposal on merits. The petitioner, having obtained suspension orders way back in 2006 year and also getting bail, is not turning up nor there is representation for the petitioner though he entered appearance by getting Memo of appearance filed through Smt. N (P) Aanjana Devi.

3. In the grounds of appeal, what all the revision petitioner agitates is that the Courts below have not properly appreciated the evidence of D.Ws.1 and 2 and the evidence of Ex.D1, and consequently it resulted in failure of justice. Thus, no concrete questions have been raised in the grounds of Criminal Revision Case.

4. Now, turning to a few facts which are necessary to advert to, the revision petitioner borrowed a sum of Rs.2,00,000/- from the 1<sup>st</sup> respondent-complainant on 31.10.2001 for his family necessities and to discharge sundry debts, and in that connection executed demand promissory note agreeing to repay the same with interest at 24% per annum and also issued a cheque bearing No.747370 for Rs.1,75,000/- drawn on Global Trust Bank Limited, Asilmetta Branch, Visakhapatnam, towards partial discharge of the amount due by him. When the said cheque was presented for collection on 27.5.2002, it was returned on 29.5.2002, with an endorsement "funds

insufficient” in the account of the accused. The complainant, therefore, got issued a notice dated 3.6.2002 informing him dishonor of cheque demanding to pay the amount, and the accused having received the notice did not give reply to the complainant and therefore, the 1<sup>st</sup> respondent filed the complaint alleging the offence punishable under Section 138 of N.I. Act.

5. The learned Magistrate having followed the due formalities, since the revision petitioner pleaded not guilty, examined the relevant witnesses and marked the relevant documents on both sides.

6. The plea put forth by the revision petitioner before the Courts below was that he never borrowed the said amount and the complainant used to carry on unauthorized chit fund business; he joined as a member; participated in the auction; became successful bidder; at the time of paying prize money he issued a blank signed promissory note and blank signed cheque; even after payment of installments the complainant did not return the said promissory note and cheque; thereafter he utilized them to make unlawful gain, and, thus, there was no legally enforceable debt or liability, and that he did not give the said cheque towards discharge of any legally enforceable debt.

7. The very same grounds are agitated before the lower appellate Court contending that the learned Magistrate did not take into consideration the evidence of D.Ws.1 and 2 and Ex.D1.

8. The learned appellate Judge having found categorical admissions of the revision petitioner as to his signatures on the promissory note and on the cheque, in his cross-examination and since the revision petitioner failed to prove that they were executed by him in connection with chit fund transaction, affirmed the conviction.

9. The Courts below, more particularly, the lower Appellate Court has arrived at the conclusion that D.W.2 is a set up witness, and, therefore, the evidence of D.W.2 is not creditworthy since D.W.2 prevaricated his statement by, initially, stating that he joined the chit value of Rs.30,000/-, but again deposed that he joined in the group of chit value of Rs.60,000/-, when he was examined on two different spells, and Ex.D1 was a created document during interregnum i.e., between first examination and second examination of D.W.2 and to the version of D.W.2 that he joined in the chit group of Rs.60,000/-. The learned Additional Sessions Judge also examined the entries in Ex.B1, which is the pass book, and has thoroughly scanned the evidence of D.Ws.1 and 2 and Exs.B1 and D1, and arrived at the definite conclusion that the evidence of D.W.2 is not believable as he deliberately gave false evidence, and thereby affirmed the conviction. Even regarding statutory presumption under Section 118 (a) of the Indian Evidence Act, 1872, and the ruling in **K.N. Beena v. Muniyappan** [2001 (2) ALT (CrI.) 382 (SC)] rendered by the Hon'ble Supreme Court, and having found that the evidence of P.Ws. 1 to 3 as trustworthy, affirmed the conviction and also sentence of imprisonment and fine.

10. When the concurrent findings are staring at the petitioner herein and taking up the very same grounds, which were agitated before the lower appellate Court, nothing more is mentioned in the grounds, it is difficult to hold that the learned Appellate Court did not properly appreciate the evidence of D.Ws.1 and 2 and Ex.D1.

11. A perusal of the judgment rendered by the learned Appellate Judge would clearly reflect that the findings he arrived at are based on appreciation of evidence of D.Ws.1 and 2, P.Ws.1 to 3 and Ex.D1 in the light of Ex.B1 entries, and, in fact, assigned reasons as to why he was recording a finding that Ex.D1 was a created document and D.W.2 was giving false evidence in favour of D.W.1, in accordance with evidentiary rule.

12. When the process of reasoning adopted by the learned lower Appellate Court in recording such finding and even on examination of evidence of D.Ws.1 and 2 and the entries in Ex.B1, when referred to in the context of Ex.D1, certainly, the findings recorded by the Court below can not at all be construed as perverse. Unless the revision petitioner succeeds in showing that the findings recorded by the Courts below are patently illegal, no interference is warranted.

13. There is no merit in the present Criminal Revision Case and is, therefore, dismissed, while confirming the conviction recorded and sentence of imprisonment for seven (7) months and fine of Rs.5,000/- imposed against the petitioner-Chinnam Ravi Kumar, by the learned VII-Metropolitan Magistrate, Visakhapatnam, in C.C.

No.220 of 2002 as affirmed by the learned IV-Additional Sessions Judge, Visakhapatnam, in Criminal Appeal No.135 of 2003, for the offence punishable under Section 138 of N.I. Act.

14. Turning to the sentence of imprisonment of seven months and fine of Rs.5,000/- with default sentence of simple imprisonment of 3 months, since the trial Court has not awarded any compensation and no reasons are assigned therefor, the sentence of imprisonment cannot be viewed as unreasonable, and, therefore, even sentence of imprisonment is also maintained directing the accused to surrender before the learned VII-Metropolitan Magistrate, Visakhapatnam by 23.01.2018. In case the revision petitioner fails to surrender, the learned VII-Metropolitan Magistrate, Visakhapatnam, is directed to secure his presence and put him in prison for serving out the sentence of simple imprisonment.

As a sequel thereto, miscellaneous petitions, if any, pending in the present Criminal Revision Case shall stand closed.

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**A. SHANKAR NARAYANA, J**

December 18, 2017.

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