

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.695 of 2009

ORDER:

Questioning the conviction under Section 255 (2) of the Code of Criminal Procedure, 1973 and the sentence of Simple Imprisonment for one year and fine of Rs.3,000/-, with default sentence to undergo Simple Imprisonment for 15 days, for the offence under Section 138 of the Negotiable Instruments Act, inflicted by the X Additional Chief Metropolitan Magistrate, Secunderabad, by his judgment dated 06.11.2008 in C.C.No.1392 of 2004, as affirmed by the IV Additional Metropolitan Sessions Judge, Hyderabad, vide the judgment dated 21.04.2009 in CrI.A.No.369 of 2008, the present Criminal Revision Case is filed by the accused. Thus, the revision petitioner – accused is fighting against the concurrent findings recorded by the courts below.

Heard Sri Venkateswar Varanasi, learned counsel for the revision petitioner, Sri G. Narender Raj, learned counsel for respondent No.2, and the learned Special Assistant Public Prosecutor for the State of Telangana appearing for respondent No.1.

Learned counsel for the revision petitioner raised three main points in an attempt to overturn the concurrent findings. The first point is, that after a purchase order was placed by the revision petitioner, no material was supplied by the complainant; second, that the cheque was issued in favour of the firm towards further business transactions as security, and the third, that the complaint is filed by the complainant

describing himself in personal capacity, though, he is representing the firm.

Learned counsel for respondent No.2 would submit that so far as the first two points raised by the learned counsel for the revision petitioner are concerned, they touch factual aspects and the findings recorded by the courts below thereon cannot be construed as patently illegal as the same are based on appreciation of evidence. Concerning the third contention raised by the learned counsel for the revision petitioner, the learned counsel for respondent No.2 placed reliance in **Shankar Finance and Investments v. State of Andhra Pradesh**¹, wherein the Honourable Apex Court in paragraph '11' referred to valid filing of complaint by describing the complainant in any one of the four methods, in case the payee is a proprietary concern. For better appreciation, what has been expressed by the Honourable Apex Court in paragraph '11' is extracted thus:

“The next question is where a proprietary concern carries on business through an attorney holder, whether the attorney holder can lodge the complaint? The attorney holder is the agent of the grantor. When the grantor authorizes the attorney holder to initiate legal proceedings and the attorney holder accordingly initiates legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder, and not by the attorney holder in his personal capacity. Therefore where the payee is a proprietary concern, the complaint can be filed: (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the “payee”; (ii) The proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern

¹ (2008) 8 SCC 536

represented by the attorney holder under a power of attorney executed by the sole proprietor. It follows that in this case the complaint could have been validly filed by describing the complainant in any one of the following four methods :

"Atmakuri Shankara Rao, sole proprietor of M/s Shankar Finance & Investments"

Or

"M/s. Shankar Finance & Investments, a sole proprietary concern represented by its proprietor Atmakuri Shankara Rao"

Or

"Atmakuri Shankara Rao, sole proprietor of M/s. Shankar Finance & Investments, represented by his attorney holder Thamada Satyanarayana"

Or

"M/s. Shankar Finance & Investments, a proprietary concern of Atmakuri Shankara Rao, represented by his attorney holder Thamada Satyanarayana".

What would have been improper is for the attorney holder Thamada Satyanarayana to file the complaint in his own name as if he was the complainant."

In the aforesaid decision, different modes of describing the complainant, where there is sole Proprietor, are shown. Therefore, the contention of the learned counsel for the revision petitioner that the *de facto* complainant in his personal capacity filed the complaint, but not on behalf of the firm, as individual's name is shown as prefix, but not the firm's name, is without any merit.

Touching the first two aspects, when the evidence of the complainant definitely indicates giving rise to the presumption, the mere assertions or the defence put forth that the material was not supplied at all and that the cheque was issued only to secure the prompt supply of

material in relation to future transactions, cannot be accepted at all. Therefore, it has to be held that there is no merit in the present revision case.

The present Criminal Revision Case is, therefore, dismissed confirming the conviction recorded and the sentence of Simple Imprisonment for one year and fine of Rs.3,000/- inflicted by the trial Court, as affirmed by the lower appellate court, as there is no perverse finding or patent illegality crept in the findings recorded by the courts below.

The revision petitioner is, therefore, directed to surrender before the learned X Additional Chief Metropolitan Magistrate, Secunderabad, by 18.01.2018 to serve out the sentence. In case he fails to surrender before the court by that date, the learned Magistrate is directed to secure his presence and send him to prison for serving out the sentence.

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

A. SHANKAR NARAYANA, J

14.12.2017

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