

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE Nos.1718, 1719 and 1720 of 2005

COMMON ORDER:

Since the accused involved in all these three revision cases is one and the same and facts are similar to each other, they are heard together and disposed of by this common order.

2. These criminal revision cases are filed under Sections 397 and 401 Cr.P.C., by the petitioner/accused questioning the propriety and legality of the Judgment dated 07.07.2005, in CrI.A.Nos.78, 79 and 77 of 2003 passed by the I Additional Sessions Judge, Ongole, whereby the learned Sessions Judge confirmed the conviction and sentence passed by the II Additional Sessions Judge, Ongole, in C.C.Nos.408, 432 and 286 of 2002, dated 01.05.2003.

3. The respondents/complainants in all three revision cases filed complaints alleging that the petitioner/accused borrowed an amount of Rs.40,000/-, Rs.15,000/- and Rs.13,194/- on 05.02.2002, 15.03.2002 and 10.07.2001 respectively, from them to meet the family needs and executed three promissory notes agreeing to repay the same with interest @ 24% per annum. Thereafter, when the complainants approached him to discharge the debt, he issued cheques. When the complainants presented the said cheques, the same were returned with an endorsement "insufficient funds". Thereafter, the complainants got issued legal notices. The accused neither paid the amount covered by cheques nor issued any reply.

4. After considering the sworn statement of complainants and perusing the complaints, the case was taken on file under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') against the

accused. On appearance, copies of documents were furnished to him as required under Section 207 Cr.PC.

5. The accused was examined under Section 251 Cr.P.C., and he denied accusation for the offence punishable under Section 138 of the Act.

6. After closure of complainants' evidence, the accused was examined under Section 313 Cr.P.C., explaining the incriminating material appearing against him, he denied the same and reported no evidence.

7. Upon hearing argument of both the counsel, the trial Court found the accused guilty of the offence punishable under Section 138 of the Act and accordingly, convicted and sentenced him to undergo simple imprisonment for one year and to pay compensation of Rs.40,000/-, Rs.15,000/- and 13,000/- to complainants' in all three cases, in default to undergo simple imprisonment for three months. Aggrieved by the said conviction and sentence, the accused preferred appeal in CrI.A.Nos. 78, 79 and 77 of 2003 and the same were dismissed confirming the conviction and sentence imposed by the trial Court vide Judgment, dated 01.05.2003 in C.C.Nos.408, 432 and 286 of 2002.

8. Aggrieved by the concurrent findings recorded by both the Courts below, the present revision cases are filed on various grounds, mainly on the ground that the cheques were not issued towards discharge of legally enforceable debt, but, both the Courts below did not consider the evidence in proper perspective and convicted the accused. It is also stated that the dispute is purely civil in nature, the trial Court ought not to have taken the case on file for the offence punishable under Section 138 of the Act and committed error.

9. During hearing, Sri M.Subba Reddy, learned counsel for the petitioner, informed the Court that the accused paid the amount covered by cheques and also filed affidavits to that effect and further contended that the party has not contacted him to prosecute the proceedings.

10. Today, Sri Amruth Rao, learned counsel representing Sri M.Subba Reddy, learned counsel for the petitioner, informed the Court that the accused did not contact the counsel and drawn the attention of this Court to the affidavits filed in the revision cases.

11. As seen from the material on record, the trial Court, upon appreciation of evidence on record, recorded a fact finding that the accused has committed the offence punishable under Section 138 of the Act, which was confirmed by the appellate Court, as such concurrent findings recorded by both the Courts below cannot be interfered with normally in revision under Sections 397 and 401 Cr.P.C., unless those findings are manifestly perverse or utterly erroneous or passed without any evidence. But, the learned counsel for the accused did not bring to the notice of the Court any such perversity, moreover, the contention in the revision cases is that the accused paid the amount covered by the cheques and filed affidavits to that effect.

12. In view of payment of amounts covered by dishonoured cheques, the ground raised in the revision cases that cheques were not issued towards discharge of legally enforceable debt, is no more available since the accused himself allegedly paid the amount covered by cheques as per the affidavits. Therefore, on the ground that the cheques were not issued towards discharge of legally enforceable debt, the concurrent

finding of fact recorded by both the Courts below cannot be interfered with.

13. The other ground raised in the revision cases is that the dispute is purely civil in nature and the present facts would not attract the offence punishable under Section 138 of the Act. But, this contention is merit less for the reason that the accused borrowed amounts and issued cheques towards discharge of debt covered by cheques, which were returned on its presentation for collection and even after receiving notice, the accused neither paid the amount covered by cheques nor sent any reply raising any specific defence. But, at the belated stage, the specific plea raised by the accused that the dispute is purely civil in nature, cannot be accepted, since concurrent fact finding was recorded by both the Courts that the cheques issued towards discharge of legally enforceable debt without sufficient funds is an offence punishable under Section 138 of the Act. Therefore, I find no substance in the contention raised by the accused in the revision cases. Hence, all the revision cases are devoid of merit and they are liable to be dismissed.

14. Accordingly, all the Criminal Revision Cases are dismissed. Miscellaneous petitions, if any, pending in these revision cases shall stand closed.

SEPTEMBER 21, 2017
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M. SATYANARAYANA MURTHY, J

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date: 21.09.2017

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