

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE NO.1789 of 2014

ORDER:

The Revision Petitioner is the Accused in C.C.No.300 of 2012 (old C.C.No.865 of 2012) on the file of the XII Special Magistrate at Hyderabad (for brevity “the trial Court”), which was registered based on a private complaint of the 2nd respondent/*de facto* complainant under Section 138 of the Negotiable Instruments Act, 1881 (for brevity “the Act”) for dishonour of Ex.P.1 - cheque bearing No.073718, dated 10.07.2010, for Rs.1,00,000/-. It is for dishonour of the cheque, after statutory notice issued by the complainant to the accused, for non payment, from accrual of cause of action, the private complaint filed, that was taken cognizance, from the sworn affidavit of the *de facto* complainant, for the offence punishable under Section 138 of the Act against the accused and after supply of copies and from his examination under Section 251 Cr.P.C., from denial of the offence, the complainant himself was examined as P.W.1 and got marked Exs.P.1 to P.6. Ex.P.1 is the cheque bearing No.073718, dated 10.07.2010, for Rs.1,00,000/- drawn on SBI, DRDL, Hyderabad; Ex.P.2 is the cheque returned Memo issued by the SBI on 03.08.2012; Ex.P.3 is another cheque returned Memo issued by HDFC Bank to P.W.1; Ex.P.4 is the Legal Notice dated 14.08.2012 got issued by P.W.1; Ex.P.5 is the postal receipt in proof of sending said notice to the accused to draw a presumption, even no acknowledgment is filed, for deemed service under Section 27 of the General Clauses Act, that also can be found from Ex.P.6, letter addressed to the Postal authorities regarding service, after recording evidence of the accused as R.W.1, the trial Court therefrom held that

the signature on the cheque is admitted by the accused and also of the factum of it is routed from his account and there is no worth evidence to show that it was taken as a security while admitting him in a chit fund transaction given as a guarantee and in support of said defence of the accused by showing any proof regarding the alleged chit transaction, there is nothing rebutting the presumptions. The trial Court convicted and sentenced the accused by the Judgment, dated 31.07.2013 in C.C.No.300 of 2012 to undergo six months imprisonment and to pay a fine of Rs.5,000/-.

2. Aggrieved by said judgment of the trial Court, the Accused filed Criminal Appeal No.756 of 2013 on the file of the IV Additional Metropolitan Sessions Judge, Hyderabad (for brevity "the lower appellate Court"). The lower appellate Court, vide judgment dated 08.07.2014 in Criminal Appeal No.756 of 2013, while confirming the conviction, modified the sentence of six months rigorous imprisonment with fine of Rs.5,000/- into only fine of Rs.1,50,0000/- with default sentence of six months simple imprisonment and to adjust fine amount already paid, if any, to pay the balance. Impugning the above, the present revision is filed.

3. Heard the learned counsel for the petitioner/accused as well as the learned counsel for 2nd respondent/complainant and perused the material on record.

4. The contentions in the grounds of revision vis-à-vis the oral submissions of the learned counsel for the revision petitioner/accused are that the trial Court gravely erred in convicting the accused instead of acquittal, despite the defence evidence let in by the accused as D.W.1 in support of cross-examination of P.W.1 of

the cheque is outcome of security in relation to a chit transaction and there is no consideration and the cheque is not given for discharge of any legally enforceable debt or other liability and thereby the conviction judgments are liable to be set aside.

5. Whereas it is the submission of the learned counsel for complainant that the concurrent findings of both the Courts below no way require interference and hence prays for dismissal of the revision.

6. From the hearing with reference to the facts supra in deciding the revision *lis*, no doubt for the offence under Section 138 of the Act, the sentence provided is upto 2 years or double the amount of cheque however, a fine above Rs.10,000/- can be imposed even after amendment to Section 29 (2) Cr.P.C. in the year 2005. In fact after amendment by Act 55 of 2002 w.e.f., 06.02.2003, of Section 143 of the Act, notwithstanding anything contained in Cr.P.C. with a provision for summary trial, that can also be converted as summons trial if needed, but the sentence of imprisonment to be imposed is upto one year and fine above Rs.5,000/- is unlimited.

7. Further, the Apex Court in **Somnath Sarkar Vs. Utpal Basu Mallick & Anr¹** observed that the offence under Section 138 of the Act cannot be considered at par with other conventional offences, for the endeavour generally of the complainant in cheque dishonour cases is mainly to recover the cheque amount with interest, if any, to compensate and the object of the provision is also to lend sanctity to the bank transactions and for quick recovery of the amount covered by the dishonoured cheque with threat of sentence.

¹ 2014 (1) ALT CrI.145

8. Having regard to the above, by considering the same and from the fact that once the cheque is admitted as routed from the account of the accused with his signature, there is a presumption under Section 118 (a) to (f), read with 139 of the Act, in favour of the complainant that it was received for consideration and for nothing discharged by the accused to show that there was any chit transaction or given only as a security for it. Thus, the conviction judgment of the trial Court confirmed by the lower appellate Court, requires no interference, but for to modify the sentence of lower appellate Court with fine of Rs.1,50,000/- towards the cheque amount of Rs.1,00,000/-, to undergo sentence of imprisonment till raising of the day and to pay fine of Rs.1,50,000/- and out of which Rs.10,000/- goes to the State and remaining Rs,1,40,000/- as compensation to the complainant.

9. Accordingly and in the result, the revision is disposed of with the following observations:

The revision petitioner/Accused is granted two months time from the date of receipt of revision order to pay said compensation amount of what is due before the trial Court to adjust towards fine of Rs.10,000/- to the State and to pay the balance amount to the complainant and, if failed to pay within the time granted, to levy and execute under Section 421 Cr.P.C., with default sentence of three months simple imprisonment.

10. Miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

Dr. B. SIVA SANKARA RAO, J

MARCH 23, 2017
YVL



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO



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Date: 23.03.2017