HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.1750 OF 2005

JUDGMENT:

The present Criminal Revision Case under Section 397 and 401 of the Code of Criminal Procedure, 1973, is filed challenging the judgment dated 20.09.2005 in Criminal Appeal No.64 of 2005 rendered by the learned IV Additional Metropolitan Sessions Judge, Hyderabad, dismissing the appeal by confirming the conviction and the sentence inflicted by the learned V Metropolitan Magistrate, Hyderabad, by the judgment dated 15.02.2005 in C.C. No.995 of 1998.

2. The learned Magistrate on appraisal of evidence of the complainant examined himself as PW.1 and Exs.P-1 to P-15 and the evidence on behalf of the accused as DW.1 and one more witness viz., P. Manoj Kumar examined as DW.2 and Exs.D-1 to D-4, held that the mandatory requirements of the provisions of Section138 of the Negotiable Instruments Act, 1881 (for short 'NI Act') have been complied with and there was enforceable debt existing and thereby convicted the revision petitioner - accused under Section 251(2) of the Code of the offence punishable under Section 138 of the NI Act sentencing him to undergo Simple Imprisonment for one year and to pay a fine of Rs.5,000/- and in default of payment, to suffer simple imprisonment for three (3)months.

3. Aggrieved over the same, the revision petitioner preferred Criminal Appeal No.64 of 2005 and the learned IV Additional Metropolitan Sessions Judge, Hyderabad, re-apprised the entire evidence taking into consideration the evidence and the grounds agitated by the revision petitioner confirmed the conviction and sentence of imprisonment inflicted and the fine imposed by the learned Magistrate.

4. In the present revision case, the revision petitioner would contend that the Courts below failed to note that the alleged loan amounts were diverted for obtaining 'demand drafts' in favour of Excise Department for wine business, etc., of PW.1 and DW.2 and no amounts were paid to the revision petitioner by the complainant and ought to have held the revision petitioner as not guilty of the alleged offence. Further ground agitated by the revision petitioner is that the Courts below failed to appreciate the evidence of DWs.1 to 3 respectively, as minutes, letter and resolution passed by the complainant company and convicted the revision petitioner on inconsistent statements and documents and arrived at wrong conclusion against the evidentiary rule, and, therefore, sought to set aside the conviction recorded and the sentence of imprisonment inflicted and the fine imposed on him.

5. The Courts below have found that DW.1 categorically admitted his signatures as executant on promissory note and the letter

marked as Ex.P-5, though, he disowned the contents, but he could not rebut the presumption that the contents therein are true. Even DW.1 admitted his signature on Ex.P-7 cheque as belonging to him. The defence set up by him that his brother-in-law and PW.1 came to him stating that they have utilized the funds of the company and the inspection of the R.B.I. was scheduled and that they are in need of money or valuable documents and requested him the blank cheque with his signature without any substantiation. According to the learned appellate Court, even the trial Court discarded the testimony of DW.2, who is one of the partners of the complainant assigning cogent reasons and opined that no credence can be given to Ex.D.4 as the same was not confronted to PW.1 while he was in the witness box and no proof was also filed with regard to dispatch of Ex.D-4. The learned appellate Court held that the presumption under Section 139 of the NI Act would attract when once issue of cheque is proved and when the same is not rebutted, by discharging the onus on the revision petitioner, opined that conviction recorded by the trial Court was correct and does not warrant interference.

6. It is to observe that between the same parties i.e., the revision petitioner herein and respondent No.1 - complainant, in relation to yet another dishonoured cheque, Criminal Revision Case No.1749 of 2005 was filed by the very same revision petitioner - accused questioning the conviction recorded by the trial Court as

confirmed by the lower appellate Court, which have passed the judgment in Calendar Case and the judgment in the Criminal Appeal, respectively. The said revision was allowed by the order dated 13.10.2017, by passing an elaborate order by a learned Single Judge of this Court. It would suffice, if what has been observed by the learned Single Judge in allowing the Criminal R.C. No.1749 of 2005 is extracted. It reads thus:

> "Persuaded by the law declared by the Delhi High Court, I would like to decide this revision, perusing the record.
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> It is the case of the petitioner/accused that the petitioner did not receive any amount under original of Ex.P-3-Pronote and issued Ex.P-4-Debit voucher and letter marked as Ex.P-5. It appears from the record that Ex.P-7 was the cheque admittedly issued by the petitioner in favour of the complainant company incorporated under Companies Act. But, the contention of the learned counsel for the petitioner is that, the cheque was not issued in lieu of any legally enforceable liability or debt. He did not deny execution of Ex.P-3-Pronote, issue of Ex.P-4-Debit Voucher and Ex.P-5-Request letter. The contents of Ex.P-5 is sufficient to conclude that the complainant was authorized by the petitioner to pay Rs.2,00,400/- to the Excise Department by way of demand draft on behalf of the petitioner and the balance amount of Rs.1,49,600/- was transferred in the account of P. Manoj Kumar and the remaining of Rs.50,000/- was transferred to the complainant's branch office. Therefore, payment of amount to P. Manoj Kumar who

is not a debtor to the petitioner and not party to Ex.P-3-promissory note, such payment would not create a relationship of debtor and creditor between the petitioner and the first respondent for an amount of Rs.1,49,600/- + Rs.50,000/-, though there is a presumption that Ex.P-3-Promissory Note is supported by consideration, in view of Section 118 of the Act and that cheque was issued in lieu of legally enforceable debt under Section 139 of the Act. Thus, the contents in the complaint and the evidence on record is sufficient to rebut those presumptions that Ex.P-3-Promissory Note was not supported by consideration of Rs.1,49,600/- + Rs.50,000/-, but, paid to one of the Directors of the company who is not an accused before the Courts below. Therefore, the petitioner is able to rebut the presumption both under Section 118 and 139 of the Act. In such case, it is for the first respondent/complainant to prove that the cheque was issued in lieu of discharge of legally enforceable debt or liability either in part or total. The admitted facts and circumstances, including the oral evidence in support of the allegations made in the complaint would suffice to conclude that the cheque was not issued in lieu of legally enforceable debt or liability. Apart from that, the evidence on record D.Ws.1 & 2 substantiated the contention of D.W.1 coupled with Exs.D-1 to D-4. Therefore, the Trial Court and the Appellate Court did not consider the evidence in proper perspective with regard to passing of consideration under original of Ex.P-3-Promissory Note, even to draw a presumption under Section 118 of the Act. In fact, the presumption was dispelled by the petitioner/accused based on the admissions made by the first respondent/complainant in the complaint and the evidence, in such case recording conviction of accused for the offence punishable under Section 138 of the Act, by the Trial Court and confirmed by the Appellate Court is illegal and the same is liable to be set-aside, since the concurrent fact findings recorded by both the Courts are manifestly perverse and apparently erroneous. Consequently, the conviction and sentence imposed by the V Metropolitan Magistrate, Hyderabad in C.C.No.996 of 1998 dated 15.02.2005 and affirmed by the IV Additional Metropolitan Sessions Judge, Hyderabad, in Crl.A.No.481 of 2005 is set-aside.

7. When, between the same parties in regard to one and the same controversy, but only the cheque and its amount are different, Criminal R.C. No.1749 of 2005 was allowed, certainly, a different approach cannot be resorted to in the present revision.

8. Therefore, the present Criminal Revision is allowed setting aside the conviction and sentence imposed by the Courts below on the revision petitioner, and, he is set at liberty forthwith, if he is not required in any other case, without furnishing any security. The bail bonds, if any, shall stand cancelled.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision stand closed.

A. SHANKAR NARAYANA, J

November 21, 2017.

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