

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.1048 of 2014

ORDER :

Against the judgment dated 06.04.2014 passed by the VII Additional District and Sessions Judge, Ongole, in Criminal Appeal No.48 of 2012, wherein the learned Judge confirmed the conviction of the accused vide judgment dated 07.03.2012 passed by the Additional Junior Civil Judge, Chirala in C.C.No.3 of 2010, this revision is filed by the accused.

2. The revision petitioner is the accused in the said C.C., which is outcome of a private complaint given by the 2nd respondent herein for the offence punishable under Section 138 of the Negotiable Instruments Act(for short 'the Act'), for dishonour of cheque-Ex.P2 bearing No.139332 dated 10.04.2009 for Rs.1,25,000/- drawn on Andhra Bank, Martur Branch. As the cheque presented was dishonoured pursuant to Ex.P2, Exs.P3 and P4-cheque return memos and from legal notice-Ex.P5 issued, Ex.P6-postal receipt, Ex.P7-postal acknowledgement with no reply for accrual of cause of action, since cognizance taken after following procedure under Sections 200 to 204 r/w 190 Cr.P.C. by the learned Magistrate for the offence supra and after supply of copies on securing the accused from examination under Section 251 Cr.P.C. from denial of the accusation put to trial and in the course of trial from the evidence of PW.1 and the supporting witnesses PWs.2 and 3 with reference to Exs.P1 to P7 and from the cross examination of PWs.1 to 3 by the accused with no cogent evidence and from the factum of cheque routed from his account not

in dispute covered by Ex.P2 and from the presumption available under reverse onus clause as per Rangappa v. Sri Mohan¹, the trial Court held that the accused found guilty for the offence under Section 138 of the Act vide judgment dated 07.03.2012 and convicted him to undergo Simple Imprisonment for a period of one year by giving set off for the remand period if any undergone by him and when impugned by the accused in Criminal Appeal No.48 of 2012, the lower appellate Court by judgment dated 06.04.2014 dismissed the same, against which, the present revision is maintained.

3. Heard and perused the material on record.

4. The so called defence of the accused, despite cheque rooted from his account with his signature not in dispute so also Ex.P1-consent letter is that there is no legally enforceable debt or other liability. There is no oath against oath from the accused. Even he did not choose to come to witness box, if he is able to make out case by preponderance of probabilities in support of the defence version, as held by the Apex Court in M.S.Narayana Menon @ Mani v. State of Kerala² reiterated in Rangappa (supra) that is not there from the evidence on record apart from as held by the Apex Court in Chapala Hanumaiah v. Kavuri Venkateswarlu³ that non-giving of reply to the legal notice leads to adverse inference to consider against the defence, so also held at para-5 of the expression in Rangappa(supra), thereby with these concurrent findings accused found guilty for the offence under Section 138 of the Act in the factual matrix, where there is nothing to interfere. Hence, the conviction and sentence imposed by the lower Court is confirmed.

¹AIR 2010 SC 1898

²(2006) 6 SCC 39)

³1971 (1) AWR 65

5. Coming to the correctness and liability, one year Simple Imprisonment for the offence under Section 138 of the Act, for dishonour of cheque dated 10.04.2009 for Rs.1,25,000/-, as held by the Apex Court in catena of expressions in Damodar S.Prabhu Vs. Sayed Babalal⁴, R.Vijayan Vs. Baby⁵ and also in Somnath Sarka v. Utpal Basu Mallick⁶, the offence under Section 138 of the Act cannot be treated at par with other offences as a crime and the aims and objects of the Act is to give sanctity to the commercial transactions and perse being entitled to cheque amount by way of interest or otherwise.

6. Having regard to the above and from submission made by the complainant that his endeavour is to recover the amount rather than punishing the accused, this Court feels it just to convert the sentence till raising of the day and out of compensation of Rs.2,00,000/-, Rs.20,000/- shall remit to the State and balance of Rs.1,80,000/- shall be paid to the complainant within two months, failing which the trial Court can enforce under Section 421 r/ w 431 Cr.P.C.

7. Accordingly, the Criminal Revision Case is disposed of.

8. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:17-04-2017
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⁴ 2010 (5) SCC 663

⁵ 2012 (1) SCC 260

⁶ 2014(1) ALT CrI.145