

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.3075 of 2017

JUDGMENT:

The present Criminal Revision Case is preferred by the appellant-accused under Sections 397 and 401 of the Criminal Procedure Code, 1973 (for short, 'the Code') questioning the conviction part recorded for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short, 'N.I. Act').

2. Originally, the learned X-Special Magistrate, Erramanzil, Hyderabad, by his judgment dated 11.08.2014 in C.C. No.115 of 2014, convicted the petitioner under Section 255 (2) of Cr.P.C. for the offence punishable under Section 138 of N.I. Act and inflicted the rigorous imprisonment for a period of six months and directed to pay compensation of Rs.1,20,000/- (Rupees One lakh and twenty thousand only) to the complainant, who is the 1st respondent herein, under Section 357 (3) of Cr.P.C. by stipulating time of two months for payment of compensation.

3. When the revision petitioner, aggrieved over the said conviction and sentence of imprisonment and compensation, preferred the Criminal Appeal No.855 of 2014, the learned Additional Metropolitan Sessions Judge for Trial of Communal Offences Cases-cum-VII Additional Metropolitan Sessions Judge, Hyderabad, by his judgment dated 4.9.2017, in Criminal Appeal No.855 of 2014 while affirming the conviction, however, modified the sentence of imprisonment to that of fine, and, accordingly, sentenced to pay a fine

of Rs.1,20,000/- (Rupees One lakh and twenty thousand only) and in default of payment of fine to undergo simple imprisonment for a period of six months, and the said amount is directed to be given to the complainant towards compensation under Section 357 (1) of Cr.P.C. after the revision time is over and admittedly, the revision petitioner was absent, and, therefore, directed the trial Court to take steps for execution of sentence.

4. Heard Sri P. Giri Krishna, the learned counsel for the petitioner.

5. The main submission of the learned counsel for the petitioner is that ExP3 promissory note was not proved as the complainant has admitted that he does not know the scribe of promissory note and it was not written before the complainant and that the petitioner was not acquainted with the writing and reading of Telugu language. It is also his submission that the Court below ought to have seen that the respondent has failed to prove that payment was made to the petitioner. Learned counsel also would submit that admission of signature on the cheque does not amount to execution of promissory note for payment of the amounts. Learned Counsel mainly relies on the answers given by P.W.1 in his cross-examination which were referred to by the learned lower Appellate Court in paragraph-7 of its judgment. The learned trial Court, in fact, assessed the evidence of P.W.1 and Exs.P1 to P6 and Ex.D1 letter dated 22.5.2014. Admittedly, the revision petitioner has not stepped into witness-box nor did she examine any witness on her behalf.

6. The learned trial Court has referred to the ingredients of Section 138 of N.I. Act and observed that nothing is elicited in the cross-examination of P.W.1 to prove that the cheque was not issued by the revision petitioner and to substantiate that the cheque was given as security and the amount was paid to Anjana Devi, who is an attester to the transaction and that Ex.D1 shows that the cheque was of the year 2009.

7. The learned trial Court having referred to the decision in **Krishna Janardhan Bhat v. Dattatraya G. Hegde** [2008 (2) ALT (CrL.) 170 (SC)] that the accused can discharge the burden of proof when himself examined as witness, but on the basis of the material available on record. It was rendered in the context of Section 118 (b) presumption. Now, what is required to be seen is the findings recorded by the lower appellate Court basing on the observations in paragraphs-7 and 12 suffer from patent illegality. In paragraph-7, the learned lower Appellate Judge would observe that from the evidence of P.W.1 in his cross-examination admitted that he does not know the scribe of Ex.P3 promissory note but he has clarified that it was brought by the accused after filling the contents therein and though, P.W.1 admitted that the accused therein was not acquainted with the reading and writing of Telugu language, it cannot be said that she cannot understand the contents of promissory note and he denied the suggestion that he paid the amount to Anjana Devi and obtained cheque from the accused towards security.

8. Learned counsel tried to impress upon by submitting that the signature of Anjana Devi was taken as attester, whereas the signature of the revision petitioner was taken as executant, as she does not know Telugu and the contents were not filled by her. His another submission is that none of the attestors was examined.

9. It is no doubt true, in paragraph-7, P.W.1 admitted that he expressed that he does not know the scribe of Ex.P3 promissory note. He admitted that the revision petitioner was not acquainted with the reading and writing of Telugu language, but the lower Appellate Court clearly held that it cannot be said that she cannot understand the contents of the promissory note.

10. Now, the question is whether the said particular answer given by P.W.1 in his cross-examination would substantiate the submission made by the learned counsel for the revision petitioner that the signature of the revision petitioner was obtained deliberately as executant of promissory note and the signature of Anjana Devi was obtained as attester only. The said submission is not clear for the reason that it is difficult to understand whether the revision petitioner admitted the execution of promissory note but put forth the plea that it was given towards security only or whether fraud was played by the complainant taking advantage of the fact that the revision petitioner is not acquainted with Telugu language and obtained her signature as executant instead of obtaining the signature of Anjana Devi, having paid amounts only to Anjana Devi but not to the revision petitioner. When such is the situation, it cannot be said that the

revision petitioner is able to rebut the presumption under Section 118 (a) of N.I. Act.

11. So far as the other submission that none of the attestors were examined to prove the execution of promissory note is concerned, the mere fact that non-examination of at least one of the attestors is no ground to disbelieve the execution of promissory note. In fact, the provisions of N.I. Act do not mandate the requirement of attestation of a promissory note. Therefore, it cannot be considered as infirmity.

12. So far as the issue of cheque is concerned, it is not as though, there is emphatic denial by the revision petitioner, but even otherwise when she takes the plea that she has executed promissory note towards security, the onus is heavily cast on her to prove that she did not issue the cheque and signature thereon does not belong to her. In the said direction, nothing is brought out by referring to the documentary proof to the handwriting expert to collect the opinion at least. Hence, it has to be held that there is no merit in the present Criminal Revision Case and the trial Court, though, inflicted the sentence of imprisonment of six months besides awarding compensation, the lower Appellate Court removed the sentence of imprisonment and the compensation awarded by the trial Court was converted to that of fine and ordered to pay the fine amount to the complainant towards compensation. No plausible reasons have been given by the lower Appellate Court, though, the same is not questioned yet by the complainant. On the other hand, it has to be

viewed that a flee-bite sentence has been inflicted, which the law laid down by the Hon'ble Supreme Court does not approve in **Suganthi Suresh Kumar v. Jagdeeshan**¹.

13. Therefore, the present Criminal Revision Case is dismissed directing the revision petitioner-accused to pay fine amount by 22.01.2018. In case, the revision petitioner-accused fails to comply with the direction by the aforesaid date, the learned X-Special Magistrate, Erramanzil, Hyderabad, to secure her presence and follow the direction by the learned Additional Metropolitan Sessions Judge for Trial of Communal Offences Cases-cum-VII Additional Metropolitan Sessions Judge, Hyderabad, in Criminal Appeal No.855 of 2014.

As a sequel thereto, miscellaneous petitioners if any pending in the Criminal Revision Case shall stand closed.

A. SHANKAR NARAYANA, J

December 19, 2017.

Note:- Copy to be transmitted to the X-Special Magistrate,
Erramanzil, Hyderabad, forthwith.

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¹ (2002) 1 SCR 269