THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.230 of 2004

ORDER:

This Revision, under Sections 397 and 401 Cr.P.C. is filed questioning the legality and propriety of the Order dt. 28.01.2004 passed in Criminal Appeal No.50 of 2002 by VI Additional District and Sessions Judge (III FTC), Warangal, affirmed the conviction and sentence passed by the Spl. Judicial First Class Magistrate for PCR Cases, Warangal, finding the accused/petitioner guilty for the offence under Section 138 of NI Act and sentenced the accused to undergo RI for a period of three months and to pay a fine of Rs.5,000/- with default sentence. Out of Rs.5,000/-, an amount of Rs.4,000/- shall be paid to the complainant towards compensation under Section 357(3) Cr.P.C.

Respondent No.1 herein/complainant filed a private complaint under Section 200 against the petitioners herein for the offence under Section 138 of NI Act alleging that the complainant joined as member in the chit bearing No.LT3R Ticket No.41 conducted by the petitioners herein for value of Rs.2,50,000/- on monthly subscription of Rs.5,000/- for 50 months. The complainant paid subscription amount regularly from time to time and became the highest bidder in the auction while agreeing to forego a sum of Rs.23,650/- and after completion of necessary formalities, the petitioners herein issued a cheque bearing No. 1270564 dt. 30.11.1999 drawn on Vysya Bank Limited, Hanamkonda Branch, Warangal District, for a sum of Rs.2,26,350/- and on its presentation for collection on 7.12.1999 through Union Bank of India, Warangal Branch, the same was returned dishonoured on the ground of insufficiency of funds on 8.12.1999. Immediately, the complainant issued a legal notice on 20.12.1999 calling upon the petitioners/accused to pay the amount covered by the cheque within a period of 15 days, though, the petitioners/accused received the said notice, neither paid the amount covered by the cheque nor reply was sent. Hence, the complaint.

The trial Court took cognizance of the case under Section 138 of NI Act and after securing the presence of the accused, examined them under Section 251 Cr.P.C. explaining the gist of the acquisition in Telugu, they pleaded not guilty and claimed to be tried.

During trial, on behalf of prosecution, Pw.1 was examined and Exs. P.1 to 4 were marked. After closure of complainant evidence, the accused were examined under Section 313 Cr.P.C. explaining the incriminating material that appeared against the accused in the testimony of complainant witnesses, they denied the same and reported no defence.

Upon hearing the arguments of both the counsel, the trial Court found the accused guilty for the offence under Section 138 of NI Act and sentenced to undergo RI for a period of three months and to pay a fine of Rs.5,000/- with default sentence. Further, it was directed that on deposit of fine amount of Rs.5,000/-, an amount of Rs.4,000/- shall be paid to the complainant towards compensation under Section 357(3) Cr.P.C.

Aggrieved by the conviction and sentence passed under the Calendar and Judgment in C.C.No.185 of 2001, the petitioners/accused preferred an appeal in Crl.A.No. 50 of 2002, and the same was dismissed affirming the conviction and sentence passed in C.C.No.185 of 2001 by the Spl. Judicial First Class Magistrate for PCR Cases, Warangal.

The present revision is filed by the petitioner/accused on various grounds. The main ground is that when the respondent herein filed consumer dispute on the basis of same cheque for Rs.2,26,330/- in CD No.21/00, obtained an Award dt. 14.06.2000 for Rs.3,36,845/- and filed an EP after transferring the decree to the I Additional Senior Civil Judge, Warangal, for realization of the amount, the Criminal Case is not maintainable. But, the Appellate Court did not take into consideration the said fact. It is also contended that the petitioners are not liable to be prosecuted for the offence punishable under Section 138 of NI Act.

Sri P. Prabhakar, learned counsel, who filed vakalat on behalf of petitioners/accused, did not appear and represent the matter. But, this Court cannot dismiss the Criminal Revision for default, the Court can decide the revision after verifying the material available on record as per the Judgment reported *Misha Sharma v. Vinod Kumar Sharma*[1], wherein it is made clear that a revision petition cannot be dismissed for default and even if the petitioner or his advocate does not appear, the court shall examine the record and decide the revision on merits.

Persuaded by the law declared by the Delhi High Court, I would like to proceed with the matter, verifying the material available on record.

The jurisdiction of this Court under Section 397 and 401 Cr.P.C. is Limited. Section 401 Cr.P.C confers a kind of paternal and supervisory jurisdiction on the high Court, over all other criminal Courts established in the state in order to correct miscarriage of justice arising from a misconception of law, irregularity of procedure, neglect

[1] 1990 Cr.LJ. (NOC) 57 (Del.)

or apparent harshness of treatment which has on the other hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some undeserved hardship to individuals. The revisional power conferred on the High Court by this Section is discretionary power, has to be exercised in the aid of justice and this Court will not exercise jurisdiction under this Section if there has been no failure of justice even though the proceedings of the lower Court suffer from irregularity or impropriety as held by Apex Court in *State of West Bengal v. Tulsidas*[2]. The revisional jurisdiction conferred upon this Court by Section 401 Cr.P.C. has to be exercised only for the purpose of relieving persons who have not had a fair trial or whose convictions have been arrived at by non observance of material provisions of the law or by such mis-directions as must have occasioned a failure of justice, as held in *Prahlad v. Emporer*[3]. Further, the High Court can, in exercise of its revisional powers, either *suo motu* on the basis of its own knowledge derived from any source whatsoever, or on an application by a complainant, exercise the powers of an appellate Court both with respect to acquittal and conviction. This revisional power is subject to the following three limitations:

> Firstly, no order can be made to the prejudice of the accused or other person unless he had an opportunity of being heard personally or by a pleader in his own defence;
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> Secondly, it cannot convert a finding of acquittal into one of conviction;
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> Thirdly, no revision can be entertained at the instance of a party who could have appealed under the Code and has not appealed.

Thus, the powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings recorded by the Courts

[2] (1964) 1 Crl.L.J.443 (SC)
[3] 48, Crl.L.J.173,174(pat)

below. As a general rule, the High Court will not in revision interfere with a finding of fact and this is specially so, where there are concurrent findings of facts of the lower Courts. But in special and exceptional circumstances, the High Court is entitled to go into questions of fact and do justice, though the power should be rarely exercised as held by the Apex Court in *S.P.S.Jayam and Company V. Nehrusadan*[4].

In revision, the High Court usually accepts the findings on questions of facts recorded by a subordinate Court unless the finding is manifestly perverse or patently erroneous in view of the law declared by the Apex Court in Bansilal v. Laxman[5].

The only contention before this Court is that when the complainant obtained a decree for the amount covered by the cheque in CD No.21 of 2000 and filed EP No.169 of 2001 after transferring of the decree from consumer forum to I Addl. Senior Civil Judge, Warangal, to realise the amount, the complaint is liable to be dismissed.

It is an admitted fact that a cheque was issued and the respondent obtained an Order from consumer forum in CD No.20 of 2000 and filed execution petition on transfer of the decree from consumer forum to I Additional Senior Civil Judge, Warangal, the order has become final. The District Consumer Forum having found that there is deficiency of service, ordered for payment of Rs.3,36,845/-. Therefore, issuance of cheque towards discharge of legally enforceable debt is not in dispute.

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[4] 1977 SC 1621
[5] (1986) 3 SCC 445

The offence under Section 138 of NI Act is only for issuing cheque towards discharge of legally enforceable debt or liability without sufficient funds to the credit of the account of the drawer i.e., the petitioner herein, and its dishonour on account of insufficiency of funds to the credit of their account, not for realization of the amount covered under the dishonoured cheque. Therefore, obtaining an order in C.D.No. 21/00 under Consumer Protection Act and filing a complaint before Magistrate Court are two different and distinct since the cause of action for the offence under Section 138 NI Act will normally arise on failure of the drawer to pay the amount within the time stipulated on receipt of notice issued under clause (b) of Section 138 NI Act. For redressal of the claim before the Consumer Forum, there is no such requirement. However, civil liability is different from criminal liability since in the Civil Court, the accused cannot be punished, but whereas in the criminal case, the amount cannot be recovered except imposing sentence, fine and ordering payment of compensation in terms of Section 357(3) Cr.P.C. The cheque amount is more than Rs.2,00,000/-, but whereas the compensation awarded is only Four Thousand as per the judgment of the Court below. Therefore, the civil proceedings before the Consumer Forum cannot be equated with criminal proceedings before the Courts below, on the ground that the petitioner obtained an Order in CD No.21/2000 and filed an EP, the complaint cannot be dismissed since the claims before Civil Court and Criminal Court are independent and the reliefs to be granted under two different forums is different. Therefore, on that ground, the Order of the Magistrate, affirmed by the Appellate Court cannot be set aside holding that the petitioner is not guilty for the offence under Section 138 of NI Act.

Undisputedly, the petitioner issued cheque for Rs.2,26,350/- and the same was dishonoured by the bank because of insufficiency of funds in the account of the petitioners and the complainant complied all the necessary formalities under proviso to Section 138 NI Act, but the petitioners did not pay the amount covered by the dishonoured cheques. The reason for dishonour of the cheque was insufficiency of funds to the credit of the account of petitioners. Therefore, it would attract an offence punishable under Section 138 of NI Act and liable for punishment for the offence under Section 138 of NI Act.

Accordingly, both the trial Court and Appellate Court recorded concurrent findings of fact and found the accused guilty and convicted and sentenced them for the offence under Section 138 of NI Act. But, first petitioner is only a chit fund company private limited and it is juristic person and no sentence of imprisonment can be imposed against petitioner No.1 and whereas, petitioner No.2 is its Managing Director, who is looking after the day to day affairs of the company and liable to be punished. But, against petitioner No.1 fine can be imposed nominally. Therefore, this Court found that petitioner No.2 is liable to undergo imprisonment and to pay fine of Rs.5,000/- as imposed by the trial Court and the petitioner No.1 is liable to pay only fine imposed by the trial Court.

With the above modification, this Criminal Revision Case is disposed of.

Consequently, miscellaneous applications pending, if any, shall also stand dismissed.

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JUSTICE M. SATYANARAYANA MURTHY

Date:06.09.2017
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C. No.230 of 2004
Dt. 06-09-2017

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