THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.438 of 2007

JUDGMENT:

The revision petitioner/appellant/accused was convicted under Section 255 (2) of Criminal Procedure Code, 1973 (for short, 'Cr.P.C.') for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short, 'N.I. Act') by the XIV-Additional Chief Metropolitan Magistrate, Hyderabad, by his judgment dated 11.9.2006 in C.C. No.1218 of 2005 and inflicted the sentence of simple imprisonment for a period of two years and also directed to pay fine of Rs.10,000/- in default to suffer simple imprisonment for 60 days. The said conviction, sentence of imprisonment and fine, when challenged by the revision petitioner before the Additional Metropolitan Sessions Judge for the Trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge, Hyderabad, the learned Additional Metropolitan Sessions Judge, on reappraisal of the evidence on record, discarded the evidence set out by the revision petitioner, dismissed the appeal confirming the conviction as well as the sentences of imprisonment and fine.

2. Further aggrieved over the aforementioned conviction and sentence of imprisonment and fine, the petitioner preferred the present Criminal Revision Case.

3. Heard Sri Sriman, learned counsel for the revision petitioner. No representation for the 2nd respondent.

4. Learned counsel for the revision petitioner has raised two points even in an attempt to overturn the concurrent findings recorded by the Courts below. First is, that the complainant being a company, the person by name, Mr. A.M. Harinath Babu, Senior Sales Officer of M/s. Meghamani Agrodyne Pvt. Ltd., who prosecuted the case on behalf of the company has no proper authorization to file the complaint. Second, that as per the Articles of Association, the Director of the said company was not competent to give General Power of Attorney to the Senior Sales Officer. These have been the submissions and no other submissions have been made touching the defence set out by the revision petitioner before the Courts below.

5. The aforesaid submissions require adjudication in the light of the findings recorded by the Courts below on this aspect of the case.

6. So far as the issue of cheque for a sum of Rs.13,74,000/- is concerned, there is no dispute that the said cheque was issued by the revision petitioner. But the stand he had taken was that one of the cheques marked as Ex.P4, which was the fifth cheque according to the revision petitioner was collected as a security, but, however, the learned trial Court answering the same under Point No.1 while not agreeing with the learned counsel for the petitioner who has relied on the rulings in *G.B. Lingam v. V. Muralikrishna Murthy and another* [1998 (1) ALD (Crl.) 940 (AP)], referred to the ruling in *K. Bhaskaran v. Sankaran Vaidyan Balan* [1999 (2) ALD (Crl.) 801 (SC)], *Hitten P. Dalal v. Batridranath* [2001 (2) ALD (Crl.) 234 (SC)]

where the Hon'ble Supreme Court held that the burden to prove that there is no subsisting liability in view of presumption under Section 139 of N.I. Act being a presumption of law lies on the accused, but the proof must be sufficient enough to rebut the presumption and mere explanation is not sufficient and in *K.N. Beena v. Muniappan* [(2001) 8 SCC 458], *Goa Plast (P) Ltd. v. Chico Ursula D'Souza* [(2004) 2 SCC 235], *Eenadu Daily Newspapers v. Siva Sanker* [2002 (1) ALD (Crl.) 403 (AP)], *Sudhir Sabharwal v. Anil Prabhakar Nilgirwar and another* [2003 (2) ALD (Crl.) 237 (AP)], *V. Munikrishnaiah v. Janaki Ram* [2005 (1) ALD 638 (AP)], *G. Venkateswar Rao v. K.V. Raghava Rao* [2005 (3) ALT (Crl.) 413 (AP)], while discarding the defence, believed the statement of account Ex.P8 showing the liability to the tune of Rs.9,87,445-50ps and interest of Rs.3,86,866/- totalling to Rs.13,74,000/- recorded the finding in favour of the 2nd respondent-complainant and against the petitioner having found that there was nothing in the cross-examination of P.W.1, the Deputy General Manager, and no documentary evidence was filed by the revision petitioner to rebut the presumption that the dishonoured cheque was issued towards discharge of legally enforceable debt.

7. Under Point No.2, which deals with *locus standi* of P.W.1 to represent the company, the learned trial Court referring to the ruling in *Y. Venkat Reddy v. Jagadamba Enterprises and another* [2002 (1) ALD (Crl.) 344 (AP)], *Waterbase Limited v. K. Ravinder and another* [2002 (1) ALD (Crl.) 689 (AP)] extracting the

propositions wherein it was held that under Section 138 of N.I. Act, and the provisions of Sections 186 and 187 of Indian Contract Act indicate that the authorization can be express or implied and implicity can be inferred from the circumstances of the case and the things spoken or written or ordinary course of dealings. The learned trial Judge, then referred to the ruling in *MMTC Limited v. Medchi Chem and Pharma Pvt. Ltd.* [2002 (1) Crl. 585 (SC)] wherein the Hon'ble Apex Court held that the company can ratify the defects of authorization during pendency of the case, even referring to certain other rulings, holding that the complainant is a juristic person having no soul, limbs and mind to approach the Court of law with a written complaint in compliance of provisions of Section 142 of N.I. Act has to be represented by a person and in that direction the Senior Sales Officer of the complainant company who was given Power of Attorney by the authorized signatory of the complainant company under Ex.P3 had signed the complaint on behalf of the complainant company and as such there was no infirmity. Then, the learned trial court held that the complainant was successful in proving the guilt of the accused for the offence punishable under Section 138 of N.I. Act against the revision petitioner and convicted under Section 255 (2) of Cr.P.C. and inflicted the sentence of imprisonment and fine as aforementioned.

8. In Criminal Appeal No.337 of 2006, the learned Additional Metropolitan Sessions Judge, formulated the points in paragraph-5 thus:

"(1) Whether there is any legally enforceable debt existing between complainant and accused?

(2) Whether the judgment of the trial Court is sustainable?

(3) To what relief?"

9. So far as the existence of legally enforceable debt is concerned, discarded the defence set out by the revision petitioner holding that in the absence of any material on record the mere oral assertions of the revision petitioner that Ex.P4 cheque was issued only as a measure of security does not stand for any scrutiny.

10. On Point No.2, the learned lower Appellate Court derived certain probabilities that the revision petitioner has not pointed out at any stage of the trial when P.W.1 stepped into witness box and later touching the *locus standi;* that it is not a civil case where the complainant has to take permission from the Court for its presentation through any Power of Attorney, in answering the argument advanced by the learned counsel for the revision petitioner before it and pointed out that the revision petitioner has not denied the status of the complainant as a company which is juristic personality in the eye of law and it has to be represented through its authorized representative who has personal knowledge of the company affairs and there was no necessity for Power of Attorney-holder to obtain permission from the Court for presenting the complaint on behalf of the company.

11. The learned Additional Metropolitan Sessions Judge has projected that the status of P.W.1 described as Deputy General Manager was not challenged by the revision petitioner in his cross-examination as P.W.1, the Deputy General Manager, who has been the in-charge of affairs of the company, his capacity cannot be doubted to testify on behalf of the complainant and any responsible officer who in the know of things of the complainant and also facts of the case can depose on behalf of the complainant company and when admittedly the complainant has not disowned P.W.1 for testifying on its behalf and as the revision petitioner also has not challenged his status or authority for deposing on behalf of the complainant, objection taken by the revision petitioner, that P.W.1 has no authority to testify on behalf of the complainant was unsustainable. Thus, dismissed the appeal confirming the judgment of the trial Court on 13.03.2007.

12. Aggrieved over the same, the present Criminal Revision Case is preferred raising various grounds, however, the learned counsel for the petitioner confined to *locus standi* of the petitioner challenging the authorization under Exs.P2 and P3 given by the Director to the Sales Officer-cum-Deputy General Manager to represent the company.

13. So far as first submission, that the description shows that the sales officer's name was mentioned after the company's name is concerned, it cannot be said that it accounts for infirmity had it been a civil suit there would have been some substance in such submission.

Even on civil side also, it has to be viewed as hyper technical, and therefore, there is no merit in the said submission.

14. Concerning the second submission as to the competency of authority given to P.W.1 by the Director, though, the learned counsel for the petitioner stated that it was not in accordance with the Articles of Association or contrary to the Articles of Association, but the learned counsel has not projected anything by pointing out which of the Articles really prohibits the Director to authorize the Sales Officer-cum-Deputy General manager. In fact, the trial Court has expressly dealt with that the Director who has given authority under Ex.P2 and Ex.P3 was the authorized signatory. In such an event, even the present submission is not worthy of acceptance as it lacks merit. Therefore, it cannot be said that the Director who had given Power of Attorney to P.W.1 to prosecute the case on behalf of the company had no competency to give such authority. Therefore, *locus standi* of P.W.1 to prosecute the complainant's company, therefore, cannot be viewed as suffering from any legal infirmity.

15. Thus, there is no merit in the present Criminal Revision Case as no perversity is to be found in the findings recorded by the Courts below, and, therefore, the same is liable to be dismissed.

16. Concerning the sentence of imprisonment, the Courts below have inflicted maximum sentence of imprisonment provided for the offence punishable under Section 138 of N.I. Act. Keeping in view the answers given by the revision petitioner and the circumstances that the revision petitioner has been facing prosecution

for almost 12 years, it is desirable to reduce the sentence of imprisonment from two years to one year, and, accordingly, reduced the simple imprisonment of two years inflicted by the trial Court as affirmed by the appellate Court to one year simple imprisonment, which would meet the ends of justice. Therefore, except to the extent of modifying the sentence of imprisonment, the other findings recorded by the Courts below are confirmed.

The revision petitioner herein is directed to appear before the learned XIV-Additional Chief Metropolitan Magistrate, Hyderabad, by 1.3.2018 to serve out the sentence of imprisonment. In case, the revision petitioner fails to surrender by that date, the learned XIV-Additional Chief Metropolitan Magistrate, Hyderabad, is directed to secure the presence of the revision petitioner and commit him to the custody of concerned jail superintendent to serve out the remaining sentence of imprisonment by exempting the period of detention he had already undergone, if any, under Section 428 of Cr.P.C.

As a sequel there to miscellaneous petitions, if any, pending in the present Criminal Revision Case shall stand closed.

A. SHANKAR NARAYANA, J

January 30, 2018.

gbs