HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.883 of 2015

ORDER:

The present revision case is filed challenging the judgment in Crl.A.No.1002 of 2012 dated 12.12.2013 on the file of the II Additional Metropolitan Sessions Judge, Hyderabad, confirming the judgment in C.C.No.450 of 2012 dated 11.09.2012 on the file of the XVI Additional Judge-cum-XX Additional Chief Metropolitan Magistrate, Hyderabad, dismissing the complaint filed under Section 138 of the Negotiable Instruments Act (for short, "the Act").

The facts of the case are that the petitioner and the 1st respondent are acquainted with each other. The 1st respondent used to do gold business by mediating with the shop owners and customers, who are intending to buy jewelry, to known persons and in the process getting commission from the shop owners. In the course of her business, when the 1st respondent was in need of money, she approached the petitioner and her husband to lend a sum of Rs.5 lakhs. Out of acquaintance, the said amount was paid to the 1st respondent. The 1st respondent once again approached and requested the petitioner to arrange a further sum of Rs.2,25,000/- for her urgent family and personal necessities. The petitioner brought the said amount from her friend, namely, Prasanna and gave to the 1st respondent. Thus, the 1st respondent in all received Rs.7,25,000/- and agreed to repay the same along with interest @ 24% per annum by executing promissory notes for the said amount on 13.04.2005 and 13.06.2005. When the petitioner demanded for the said amount, the husband of the 1st respondent issued a cheque bearing No.299588 dated 13.08.2009 for Rs.2,40,000/- drawn on Union Bank of India, Chikkadpally branch. Similarly, the 1st respondent also issued another cheque bearing No.293733 dated 15.08.2009 for Rs.12 lakhs drawn on the same bank for discharge of the aforesaid loan amount with a request to present the said cheques in the month of December, 2009, for realization. When the said cheques were presented for realization, the same were dishonoured with an endorsement "account closed". The petitioner, after complying with the mandatory procedure under the provisions of the Act, such as, issuance of legal notice, filed the complaint. It is relevant that the 1st respondent got issued a reply with all false and baseless allegations.

The petitioner in order to establish her case examined herself as PW.1 and marked Exs.P1 to P10. On behalf of the 1st respondent, she has not examined any witness in defence.

The learned Magistrate, after hearing the matter and appreciating the evidence brought on record, found the 1st respondent not guilty for the offence under Section 138 of the Act and dismissed the complaint by judgment dated 11.09.2012. Aggrieved by the said judgment, the petitioner filed Crl.A.No.1002 of 2012 on the file of the II Additional Metropolitan Sessions Judge, Hyderabad. The lower appellate Court, after analyzing the evidence, was pleased to dismiss the appeal by judgment dated 12.12.2013. Against the same, the present revision case is filed.

Learned counsel appearing for the petitioner would submit that dismissal of appeal was on mere presumptions and surmises, but not as per the appreciation of independent evidence. The lower appellate Court failed to consider Section 25(3) of the Indian Contract Act i.e., issuance of a cheque by the accused for a time barred debt, validates the same and therefore it becomes a legally enforceable debt under Section 139 of the Act. The lower appellate Court committed an error in observing that the variations in Exs.P1 to P4 creates any amount of doubt set out by the petitioner and the said doubt is sufficient to rebut the presumption contemplated under Section 139 of the Act.

Learned counsel appearing for the 1st respondent supported the impugned judgment.

Having heard both the counsel and from the perusal of the material on record, the question that crops up for consideration is:

> *Whether there is legally enforceable debt and if so, whether the petitioner proved the guilt of the 1st respondent for the offence under Section 138 of the Act?*

The admitted facts are that out of friendship a sum of Rs.7,25,000/- was lent by the petitioner to the 1st respondent and her husband on 13.04.2005 and 13.06.2005. In receipt of the said amount, the 1st respondent executed four promissory notes i.e., Exs.P1 to P4 and two cheques under Exs.P5 and P6. When the said cheques were presented for realization, the same have been returned with an endorsement "account closed". When the petitioner got issued a legal notice dated 30.12.2009 (Ex.P7), the 1st respondent got issued a reply notice dated 16.01.2010 (Ex.P10) with false allegations that resulted in filing of a complaint by the petitioner against her for the offence under Section 138 of the Act.

To prove her case, the petitioner examined herself as PW.1. In the cross-examination, PW.1 admitted that Ex.P5, cheque, was presented by her into the bank in the month of December, 2009, i.e., 3½ years from the transaction under Exs.P1 to P4 and by that time, it has become a time barred debt. It is relevant that the 1st respondent has admitted issuance of four promissory notes and Ex.P5, cheque, which raised automatic presumptions as contemplated under Sections 118 and 139 of the Act in favour of the petitioner. When once the presumption is drawn, it is for the 1st respondent to rebut the same to the effect that there is no legally enforceable debt and towards which the subject promissory notes and the cheques were issued. The 1st respondent, accused, has to rebut the said presumption by showing the preponderance of probabilities. In fact, the standard of proof in defence is not as strict as the prosecution i.e., proving the case beyond reasonable doubt, but it is only preponderance of probabilities. It is the specific case of the petitioner that the 1st respondent borrowed a sum of Rs.5 lakhs on one occasion and Rs.2,25,000/- on other occasion and executed four promissory notes on 13.04.2005 and 13.06.2005 respectively. The said fact was also deposed in the affidavit filed in lieu of the chief examination. However, from the perusal of Exs.P1 to P4, it is evident that Ex.P1, promissory note dated 13.04.2005, is executed for a sum of Rs.2,15,000/- and Exs.P2 and P3, promissory notes dated 13.06.2005, are executed for a sum of Rs.2 lakhs each and Ex.P4, promissory note dated 13.06.2005, is executed for Rs.1,10,000/-. Thus, if the amounts mentioned in Exs.P1 to P4 are taken into consideration, the same is not supporting and corroborating the evidence of PW.1 in the complaint. As per the complaint, the said amount was borrowed in the form of Rs.5 lakhs and Rs.2,25,000/- separately. If Rs.5 lakhs and Rs.2,25,000/- have been received on two different occasions, the promissory notes should be for the said amounts. However, Ex.P1, promissory note dated 13.04.2005, is for Rs.2,15,000/- and Exs.P2 to P4 are for a sum of Rs.5,10,000/-. That apart, as per the complaint, originally the 1st respondent borrowed a sum of Rs.5 lakhs and thereafter Rs.2,25,000/-. But, Ex.P1, promissory note, which is prior to execution of Exs.P2 to P4, is for Rs.2,15,000/-, but not for Rs.5 lakhs. Similarly, Exs.P2 to P4 are for Rs.5,10,000/- and not for Rs.2,25,000/-. So this anomaly creates any amount of doubt in the case set up by the petitioner. Since the rebuttal is only in the form of preponderance of probabilities, the doubt created is sufficient to conclude that the 1st respondent, accused, rebutted the presumption under the provisions of the Act.

In **Rangappa vs. Mohan**[1], the Apex Court held as under:

> "It is settled position that when an accused has to rebut the presumption under Section 139 of the N.I. Act, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail."

The other point to be considered is:

[1] AIR 2010 SC 1898

Whether the alleged debt under Exs.P1 to P4 is barred by limitation as contended by the 1st respondent and thereby there is no legally enforceable debt?

Ex.P1 is dated 13.04.2005 and Exs.P2 to P4 are dated 13.06.2005. Ex.P5, cheque, dated 15.08.2009 is for Rs.12 lakhs. As per PW.1, the 1st respondent issued the said cheque on 15.08.2009 and the same was presented into her bank account on 16.12.2009. It is an admitted fact that by the date of issuance of Ex.P5, cheque, the debt covered under Exs.P1 to P4 is barred by limitation. In fact, on this aspect in **Giridhari Lal Rathi vs. P.T. Ramanujachari and another**[2] this Court held as under:

> "Alleged loan had been advanced in the year 1985 and the cheque was issued in the year 1990. Debt had become time barred when the cheque was issued. By issuance of cheque, the limitation period was not extended. No fault can be found for acquittal."

In **A. Yesubabu vs. D. Appala Swamy and another**[3] this Court held as under:

> "Cheque issued by the accused nearly seven years after taking of the amount from the complainant. Even the receipts were clearly barred, as the complainant could not enforce the liability in a Court of law by filing a suit for recovery of the amount. The debt in question not legally recoverable. Hence, no liability on the part of the accused."

In **Mandapalli Nirmalatha vs. State of Andhra Pradesh and another**[4] this Court held as under:

> "Cheque has to be presented by the complainant within period of validity debt borrowed. Dishonour of cheque presented beyond period of limitation will not give rise to any cause of action, as on date of presentation of the said cheque, there was no existing legally enforceable debt."

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[2] 1997 (1) ALT (Crl) 509 (A.P.)
[3] 2004 (1) ALT (Crl) 39 (A.P.)
[4] 2012 (2) ALD (Crl.) 40 (A.P.)

In the light of the observations made in the above said decisions, it is quite manifest that Exs.P1 to P4, promissory notes, are barred by limitation by the date of issuance of Ex.P5, cheque. Admittedly, by the date of issuance of Ex.P5, cheque, Exs.P1 to P4, promissory notes, are not enforceable in the Court of law. In clear words this Court in **Giridhari Lal Rathi** (2 supra) observed that by issuance of cheque the limitation period cannot be extended.

However, relying on Section 25(3) of the Indian Contract Act, the petitioner also contended that date of issuance of cheque is to be treated as acknowledgement of debt. If that be so, Ex.P5, cheque, can be treated as a fresh cause of action based on which the petitioner can file a suit for recovery of amount, since it amounts to a fresh promise made by the 1st respondent. Therefore, issuance of Ex.P5, cheque, in any way, cannot be treated as issued for discharge of the debt under Exs.P1 to P4, since by the date of issuance of Ex.P5, cheque, Exs.P1 to P4, promissory notes, are barred by limitation.

In the light of the discussion made above and the observations made by this Court, it is manifest that the debt covered under Exs.P1 to P4, promissory notes, is barred by limitation and Ex.P5, cheque, issued at a later point of time for the alleged debt barred by limitation is not enforceable. In these circumstances, the debt, as alleged by the petitioner, cannot be treated as a legally enforceable debt. As such there is no liability on the part of the 1st respondent.

Basing on the above, this Court does not find any irregularity or illegality in the judgment passed by the lower appellate Court confirming the judgment of the Court below. Thus, there are no merits in the revision case and the same is liable to be dismissed.

Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date: 30.08.2018.
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