

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No.292 OF 2018

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner-accused to set aside the conviction recorded against him under Section 255(2) Cr.P.C. and the sentence of payment of fine of Rs.1,00,000/-, which is the cheque amount, for the offence under Section 138 of the Negotiable Instruments Act, *vide* judgment dated 30.09.2015 passed in C.C. No.5 of 2014 on the file of the XVI Special Magistrate, Hyderabad (for short, 'the trial Court'). The trial Court directed that the said fine amount shall be paid to the complainant-2nd respondent herein as compensation within one month from the date of judgment and in default, to undergo simple imprisonment for three months. The said conviction and sentence recorded by the trial Court was confirmed by the learned IV Additional Metropolitan Sessions Judge, Hyderabad (for short, 'the Sessions Judge') in Criminal Appeal No.832 of 2015 on 10.01.2018.

2. Heard the learned counsel for the petitioner-accused, learned Assistant Public Prosecutor representing the 1st respondent-State and the learned counsel for the 2nd respondent-complainant, apart from perusing the material on record.

3. Learned counsel for the petitioner-accused would submit that there is no legally enforceable debt as contemplated under Section 138 of the Negotiable Instruments Act; no civil suit is filed to recover the amount due; there is no promissory note for the amount due; the 2nd respondent-complainant has no capacity to lend such a huge amount; originally the petitioner-accused was due Rs.9,000/- only, the complainant

had forcibly taken a blank cheque and filed false complainant; and ultimately, prayed to set aside the conviction and sentence recorded against the petitioner-accused.

4. On the other hand, learned counsel for the 2nd respondent-complainant would submit that the complainant had returned from Soudi and he is having substantial amount; the petitioner-accused wanted to develop stationery business, for that the complainant had given the amount and the subject cheque was given by the petitioner-accused for Rs.1,00,000/- towards discharge of the amount borrowed by him, in addition to other cheques which are the subject matters of CrI.R.C. Nos.293 and 295 of 2018; both the Courts below have rightly appreciated the evidence on record and recorded conviction and sentence against the petitioner-accused for the offence under Section 138 of the Negotiable Instruments Act; and ultimately, prayed to dismiss the Criminal Revision Case.

5. In view of the contentions raised on behalf of both sides, the point for determination is, whether the conviction and sentence recorded against the petitioner-accused for the offences under Section 138 of the Negotiable Instruments Act are liable to be set aside?

6. Revisional jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is a truncated one. Unless the findings are based upon no evidence or perverse, or that inadmissible evidence was taken into consideration in convicting the accused or that admissible evidence was overlooked, normally the revisional powers cannot be exercised to disturb the concurrent findings of the two Courts below. To know whether the findings are based on proper appreciation of the evidence on record, it is necessary to look into the evidence on record.

7. P.W.1 is the complainant, who corroborated the submissions made by his counsel before this Court and also specifically stated that Ex.P.1-cheque was given to him by the petitioner-accused to discharge the legally enforceable debt and on presentation, it was dishonoured. He also stated the other details of the borrowing of the amount, etc. Through the evidence of P.W.1, Ex.P.1-cheque bearing No.741886 dated 15.07.2013, Ex.P.2-cheque return memo dated 11.10.2013, Exs.P.3 and P.4-office copies of legal notices dated 08.11.2013, Ex.P.5-postal receipts two in number dated 08.11.2013, Ex.P.6-postal acknowledgment card and Ex.P.7-postal acknowledgment dated 18.12.2013 were marked. Though the accused set up defence that he is due an amount of Rs.9,000/- only and the blank cheques were forcibly taken by the complainant, he did not enter into the witness box and depose the same. When the petitioner-accused was examined under Section 313 Cr.P.C., he simply denied the borrowing as well as issue of Ex.P.1-impugned cheque. Both the Courts below while dealing with the subject matter have elaborately dealt the entire evidence on record and held that Ex.P.1 cheque was given to discharge legally enforceable debt, which was dishonoured. All the requirements of Section 138 of the Negotiable Instruments Act are proved. There is no substance in the submissions made on behalf of the petitioner-accused. The findings of both the Courts below are based on record. Therefore, the Criminal Revision Case is liable to be dismissed.

8. Accordingly, the Criminal Revision Case is dismissed. The trial Court shall take appropriate steps against the petitioner-accused to implement the impugned judgment. It is also appropriate to state that pursuant to the order dated 07.02.2018, half of the compensation amount awarded by the trial Court was deposited in C.C. No.5 of 2014 and the complainant is entitled to receive the said amount without furnishing any

security so also the remaining amount as and when deposited.
Miscellaneous petitions, if any, pending in this Criminal Revision Case,
shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 24-04-2018

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