HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.1459 of 2017

ORDER:

Heard the learned counsel for the petitioner and the 2nd respondent.

The present criminal revision case is filed questioning the judgment passed in Crl.A.No.458 of 2016 dated 31.05.2017 on the file of the XIV Additional District and Sessions Judge-cum-XIV Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B. Nagar, confirming the judgment passed in C.C.No.236 of 2015 dated 03.05.2016 on the file of the Court of the VI Special Magistrate at L.B. Nagar, Hastinapuram.

The facts of the case are that the 2nd respondent herein filed a private complaint under Section 200 Cr.P.C. against the petitioner for the offence under Section 138 of the Negotiable Instruments Act (for short, "the Act") on the file of the Court of the VII Additional Chief Metropolitan Magistrate, Hyderabad at Nampally. The case of the 2nd respondent is that himself and the petitioner are known to each other since a long time. Due to acquaintance, on 02.07.2014 the petitioner approached him and requested to lend a sum of Rs.10,00,000/- towards hand loan to meet her family requirements. Out of acquaintance, he paid a sum of Rs.10,00,000/- to the petitioner on 06.07.2014 at his residence. On receipt of the said amount, the petitioner executed a promissory note in favour of the 2nd respondent promising to repay the amount within a period of three months. At the time of obtaining the said loan amount, Sri S. Prabhaker Reddy and Sri C. Suresh Kumar, who are well known to the parties, were present and attested the promissory note as witnesses. On repeated demands, the petitioner issued a cheque bearing No.330584 dated 01.11.2014 for an amount of Rs.10,00,000/- drawn on State Bank of Hyderabad, Saidabad main road branch, Hyderabad, in favour of the 2nd respondent. On presentation of the said cheque on 06.11.2014, it was returned with an endorsement "the account was closed" through a cheque return memo dated 06.11.2014. After complying with the other statutory consequential steps such as issuance of legal notice within the statutory period and waiting for the completion of the same and in default of payment, the 2nd respondent lodged a private complaint vide C.C.No.236 of 2015. After full-fledged trial, the petitioner was convicted under Section 255 Cr.P.C. sentencing her to undergo simple imprisonment for six months and also to pay a fine of Rs.13,00,000/-. Out of the said fine amount, a sum of Rs.10,000/- shall be paid to the State. In default, she shall undergo simple imprisonment for three months and the balance fine amount of Rs.12,90,000/- was awarded as compensation to the 2nd respondent under Section 357 Cr.P.C. to be paid within three months by judgment dated 03.05.2016. Aggrieved by the said judgment, the petitioner filed an appeal vide Crl.A.No.458 of 2016 on the file of the XIV Additional District and Sessions Judge-cum-XIV Additional Metropolitan Sessions Judge, Ranga Reddy at L.B. Nagar. After hearing both the parties, the said appeal was dismissed on 31.05.2017 confirming the judgment passed by the Court below. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner basically contended that there is no legally enforceable debt warranting conviction of the petitioner and sentencing her to undergo simple imprisonment for a period of six months and to pay a fine of Rs.13,00,000/- in the form of compensation. The 2nd respondent is a stranger to the petitioner and there are no money transactions between the petitioner and the 2nd respondent. In fact, the petitioner has not issued the subject cheque to the 2nd respondent for the purpose of alleged borrowing of Rs.10,00,000/-. In fact, the cheque was given to one Mr. Anil in connection with some monitory transactions with him. That apart, the counsel also specifically pleaded that the 2nd respondent herein has no capacity to advance the sum of Rs.10,00,000/- as hand loan to the petitioner. Both the Courts below failed to consider the legal aspect leading to the conviction of the petitioner. Therefore, he sought for allowing of the criminal revision case.

Per contra, the learned counsel appearing for the 2nd respondent supported the judgment of the lower appellate Court and contended that the petitioner failed to discharge the burden placed on her particularly with reference to the rebuttal that she has no money transactions with the 2nd respondent and more particularly that the cheque was given to one Anil in connection with some other transaction. However, the petitioner miserably failed to prove by not examining the said Anil that the cheque was given to him and how the cheque came into the custody of the 2nd respondent. Since the petitioner accepted issuance of the cheque, the presumption under Section 139 of the Act is automatically drawn in favour of the 2nd respondent and the petitioner failed to establish the defence taken by him.

Having heard both the counsel and also perusal of the material on record, the undisputed facts are that in lieu of receipt of Rs.10,00,000/- from the 2nd respondent, the petitioner executed a promissory note in his favour and thereafter issued the subject cheque. On presentation of the said cheque, it was returned with an endorsement that the account is closed. On complaint, though the petitioner has taken a specific plea with regard to the subject cheque given to one Mr. Anil, she has not produced any cogent evidence to prove the same by way of rebuttal. In fact, the 2nd respondent by examining himself as PW.1 and one of the attesting attestors on the promissory note as PW.2 and the issuance of the subject cheque for discharge of the said legally enforceable debt, has proved the initial burden placed on him and therefore the presumption under Section 139 of the Act is automatically drawn.

Per contra, though the petitioner has taken a specific stand that she has no monitory transactions with the 2nd respondent and the subject cheque is not issued to him, she miserably failed to establish her case that the subject cheque was issued to one Sri Anil. She also failed to establish that how the subject cheque came into the custody of the 2nd respondent. Though the burden on the petitioner on the defence taken by her is preponderance of probabilities and not as that of on prosecution proving beyond reasonable doubt, the petitioner has not adduced any evidence even examining the said Anil. On the other hand, though the petitioner has taken a plea that the 2nd respondent has no financial capacity to lend the sum of Rs.10,00,000/-, it is not an ingredient engrossed under Section 139 of the Act and that once the execution of the promissory note and issuance of cheque is proved, the financial capacity of the 2nd respondent and source of securing such a huge amount cannot be disputed. Even on this count also, the petitioner failed to prove her case. On factual aspect, though the petitioner has taken the plea that the legal notice issued in compliance with Section 138 of the Act is not served on her, but both the Courts below have held that such ground is not available to the petitioner and the endorsement of the postal authorities that "the addressee left" is treated as deemed service.

In fact, in **M/s. Videocon International Limited, rep., by Khem Chand Khari Begumpet, Hyderabad vs. M/s. Innovation, rep., by proprietor Anjan Kumar and another**[1], this Court has an occasion to deal with the issue and held as under:

> "The NI Act contains provisions raising presumptions are regards the negotiable instruments under Section 118(a) of the Act as also under Section 139 thereof. The said presumptions are rebuttable. Whether the presumption rebutted or not would depend upon the facts and circumstances of each case. The Supreme Court clearly laid down in catena of decisions that the standard of proof in discharge of the burden in terms of Section 118 and 139 of the NI Act being the preponderance of a probability, the inference thereof can be drawn not only from the material brought on record but also from the reference to the circumstances upon which the accused relied upon. The burden to rebut the presumptions on the accused is not as high as that of the prosecution.

[1] 2011 (3) ALT (Crl) 183 (AP)

> Under Section 118, unless the contrary is proved, it is to be presumed that the Negotiable instrument (including a cheque) had been made or drawn for consideration. Under Section 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part of a debt or liability. Thus, in complaints under Section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused. The Supreme Court in *Hiten P. Dalal vs. Bratindranath Banerjee* while dealing with Sections 138 and 139 of NI Act held that whenever a cheque was issued to the complainant for a specific amount there is a presumption that it is towards discharge of legally enforceable debt. In the event of dispute, the burden is on the accused to prove that there is no subsisting liability as on the date of issuing of cheque and the proof must be sufficient to rebut the presumption and mere explanation is not sufficient."

In **M. Chinnakoti Reddy vs. Smt. B. Bhagyalaxmi**[2] the Hon'ble High Court of Karnataka held as under:

> "On a consideration of these contentions, insofar as the finding of the Court below that the appellant had failed to establish that he was a man of means and did possess the financial capability of lending a large sum of money of Rs.10,00,000/- is not a finding that was warranted, as it was not incumbent on the complainant to establish the legal liability in the first instance. The presumption under Section 139 of the NI Act is in favour of the holder of the cheque and the burden of establishing that there was no legal liability in respect of which the cheques had been issued, was on the respondent."

In **B. Atchyutha Reddy vs. State of A.P. and another**[3], this Court has an occasion to deal with the issuance of legal notice and service of the summon on the addressee and held as under:

> "It is well settled that a notice returned with endorsement 'unclaimed' by the addressee can be presumed to have been served on him. In this connection, a reference to Section 27 of the General Clauses Act will be useful. The section reads as under:
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> > "27. Meaning of Service by Post:- Where any Central Act or Regulation made after the commencement of this Act authorizes of requires any document to be served by post, whether the expression 'serve' or either of the expression 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing,

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[2] Criminal Appeal No.2556 of 2009
[3] 2009 (3) ALT (Crl.) 286 (AP)

> prepaying and posting by registered post, a letter containing the documents, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."
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> No doubt Section 138 of the Act does not require that the notice should be given only by 'post'. Nonetheless the principle incorporated in Section 27 can profitably be imported in a case where the sender has dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice.
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> Thus, when a notice is returned by the sendee as unclaimed such date would be the commencing date in reckoning the period of 15 days contemplated in Clause (d) to the proviso of Section 138 of the Act. Of course such reckoning would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address. In the present case the accused did not even attempt to discharge the burden to rebut the aforesaid presumption."

In the light of the above, this Court is of the opinion that there is no illegality or irregularity in the judgment of the lower appellate Court in confirming the judgment of the trial Court for convicting the petitioner herein and sentencing her to undergo simple imprisonment for a period of six months and payment of Rs.13,00,000/- as compensation. As such, 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: 25.06.2018.
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