

THE HON'BLE SRI JUSTICE P. KESHA RAO  
CRIMINAL REVISION CASE NO. 1202 OF 2005

ORDER:

Heard the learned counsel for the petitioner and the learned counsel for respondent No.2.

2. The present Criminal Revision Case is filed questioning the judgment in CrI.A.No.98 of 2004 dated 9.5.2005 on the file of the Court of the Principal Sessions Judge, Kurnool, confirming the judgment in C.C.No.69 of 2002 dated 8.7.2004 on the file of the Court of the Judicial Magistrate of I Class, Kurnool, convicting the petitioner for the offence under Section 138 of Negotiable Instruments Act.

3. The facts in brief are that respondent No.2 herein filed C.C.No.69 of 2002 against the petitioner for the offence under Section 138 of Negotiable Instruments Act. It is the specific case of respondent No.2 that the petitioner approached him and obtained Rs.2,00,000/- as hand loan for his family and business necessities and in lieu of the same he has issued the subject cheque. When the subject cheque was presented for realization, it was returned with an endorsement, "insufficient funds" leading to filing of the above said Calendar Case. After appreciation of the evidence on record, both the Courts below found that the petitioner is guilty of the offence under Section

138 of Negotiable Instruments Act and the trial Court convicted him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/-, in default to suffer simple imprisonment for a period of three months. However, the lower appellate Court confirmed the conviction of sentence but the fine of Rs.5,000/- has been converted into compensation and directed to be paid.

4. Learned counsel appearing for the petitioner would contend that the judgment of the lower appellate Court is contrary to the evidence on record and probabilities of the case. Respondent No.2 miserably failed to establish that Ex.P1 was issued towards the legally enforceable debt, since it was given to one Ramanaiah Shetty for security purpose, but not to respondent No.2. He also contended that PW1 admitted in his evidence that he has close acquaintance with Ramanaiah Shetty to whom the subject cheque was issued by the petitioner.

5. Per contra, learned counsel for respondent No.2 supported the impugned judgment.

6. Having heard both the counsel and from the perusal of the material on record, it is revealed that petitioner herein was convicted for the offence under Section 138 of Negotiable Instruments Act. In the Calendar Case, the petitioner has

taken a specific defence in the form of rebuttal that the subject cheque has been issued to one Ramanaiah Shetty for the purpose of security. Having taken such a specific defence, he failed to discharge the burden in proving that the subject cheque was issued to Ramanaiah Shetty, by examining said Ramanaiah Shetty.

7. It is further revealed from the impugned order that respondent No.2 proved beyond reasonable doubt by examining himself as PW1 and one K.V.Ramana as PW2 with regard to lending of the amount and giving of subject cheque to respondent No.2 for collection subsequently. In the light of the same, respondent No.2 has discharged the onus in proving that the subject cheque has been issued towards the legally enforceable debt.

8. In the light of the above, this Court is of the opinion that there is no irregularity or illegality in the judgment passed by the lower appellate Court. As such, there are no merits in the Criminal Revision Case.

9. Accordingly, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO,J

Date: 3.10.2018  
KPM