

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Criminal Revision Case No.1230 of 2005

ORDER:

As there was no representation for the petitioner on 12.04.2018, the matter was directed to be listed today under the caption "For Dismissal". Even today, there is no representation for the petitioner. However, without waiting for the counsel for the petitioner to advance arguments, this Court can examine the material on record and pass appropriate orders.

2. This Criminal Revision Case, under Sections 397 & 401 of Cr.P.C., is filed by the petitioner/accused, challenging the judgment, dated 20.07.2005, passed in CrI.A.No.222 of 2002, by the Sessions Court, Prakasam Division at Ongole, whereby, the judgment, dated 30.10.2002, passed in C.C.No.150 of 1998 by the Judicial Magistrate of First Class, Markapur, convicting the petitioner/accused for the offence punishable under Section 138 of The Negotiable Instruments Act, 1881 ('the Act', for brevity) and sentencing him to undergo simple imprisonment for six months and imposing fine of Rs.5,000/-, was confirmed.

3. The petitioner/accused, in the grounds of Revision, contended that both the Courts below failed to appreciate the facts and circumstances of the case. There is no legally enforceable debt. Both the Courts below reached to erroneous conclusions and found the petitioner/accused guilty of the offence punishable under Section 138 of the Act. The findings of

both the Courts are not sustainable under law and ultimately prayed to allow the Criminal Revision Case.

4. As seen from the evidence on record, to prove the guilt of the accused, the complainant got himself examined as P.W.1, got examined another person as P.W.2 and got marked Ex.P.1 – Cheque bearing No.MS/SB/R.No.345394, dated 30.08.1997, for Rs.7,70,000/-, Ex.P.2 – Counterfoil of Savings Bank Pay-in slip dated 03.02.1998, Ex.P.3 – Memo issued by State Bank of India, Markapur, Ex.P.4 – Copy of legal notice issued to accused, Ex.P.5 – Returned postal cover, Ex.P.6 – Certificate issued by postal authorities, and Ex.P.7 – Memo issued by Andhra Bank, Somajiguda. The petitioner/accused deposed himself as D.W.1, got examined another person as D.W.2 and got marked Ex.D.1 – Fortnight book of Shares business (from 15.04.1996 to 30.04.1996), Ex.D.2 – Office copy of letter addressed to Managing Director, Sri Neelachal laboratories Limited, Hyderabad, Ex.D.3 – Reply letter received from Sri Neelachal Laboratories, Hyderabad, Ex.X.1 – Letter from Sri Kanyaka Securities Limited, Ex.X.2 – Xerox copy of the question, dated 07.02.2000, and Ex.X.3 – Xerox copy of the question, dated 25.02.2000.

5. In view of the convincing and cogent evidence of P.W.1 and P.W.2 coupled with the documentary evidence under Exs.P.1 to P.7, no credibility can be given to the oral and documentary evidence adduced on behalf of the petitioner/accused. Therefore, it cannot be held that there is no legally enforceable

debt and Ex.P.1 – cheque dated 30.08.1997 for Rs.7,70,000/- was not issued in favour of the de-facto complainant for discharging the legally enforceable debt. Both the Courts below did not overlook the admissible evidence and did not act upon any inadmissible evidence. Both the Courts below have appreciated the facts and circumstances of the case in right perspective and reached to a correct conclusion finding the petitioner/accused guilty of the offence punishable under Section 138 of the Act. The concurrent findings of both the Courts below cannot be disturbed. There is nothing to take a different view. There is no miscarriage of justice. The Criminal Revision Case is devoid of merit and is liable to be dismissed.

6. In the result, the Criminal Revision Case is dismissed.

Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

20th April, 2018
Bvv

Dr. SHAMEEM AKTHER, J