

THE HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE NO. 2637 OF 2014

ORDER:

1. Heard the learned counsel for the petitioner.
2. The present Criminal Revision Case is filed questioning the judgment in CrI.A.No.384 of 2013 dated 11.12.2014 on the file of the Court of I. Additional Metropolitan Sessions Judge, Hyderabad, acquitting respondent No.1 for the offence under Section 138 of the Negotiable Instruments Act.
3. The facts in brief are that the petitioner herein filed C.C.No.59 of 2012 (old C.C.No.2002 of 2009) against respondent No.1 for the offence under Section 138 of Negotiable Instruments Act. It is the specific case of the petitioner that he has lent different amounts to respondent No.1 when he was in need in connection with directing and producing a movie named, "Naa Katha". Pursuant to the receipt of the amounts, the subject cheques in the complaint were issued. On presentation, all the cheques were dishonoured with an endorsement "insufficient funds" and "account closed" leading to filing of the above Calendar Case. However, respondent No.1 has taken a specific plea in the cross-examination that the petitioner is a small time employee and he does not have the financial capacity to lend a sum of

Rs.9,80,000/-. That apart, respondent No.1 has also taken a plea that the subject cheques were issued to his wife for the purpose of obtaining a bank loan. To further substantiate his contention, he has also taken a plea that the complainant's daughter married him suppressing the factum of her earlier marriage with one Ajay. Therefore, immediately disputes arose. While appreciating the evidence, the trial Court found that respondent No.1 has committed an offence punishable under Section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo rigorous imprisonment for one year and fine of Rs.5,000/- was imposed, in default simple imprisonment for three months was imposed vide judgment dated 9.4.2013. Aggrieved by the said judgment, respondent No.1 filed CrI.A.No.384 of 2013 before I.Additional Metropolitan Sessions Judge, Hyderabad. After hearing, learned Metropolitan Sessions Judge, has set aside the judgment of the learned Magistrate and acquitted respondent No.1 vide judgment dated 11.12.2014. Aggrieved by the same, the present Criminal Revision Case is filed.

4. Learned counsel for the petitioner would contend that the lower appellate Court failed to appreciate the evidence adduced on behalf of the petitioner in proper perspective and erred in acquitting respondent No.1 for the offence under Section 138

of Negotiable Instruments Act. He also contended that the lower appellate Court misunderstood the evidence of PW1. He also further contended that merely because the petitioner has not demanded interest over the cheque amount, it will not disentitle him to claim the same.

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

“Whether the petitioner has got the financial capacity to lend Rs.9,80,000/- to respondent No.1 and whether there was any legally enforceable debt?”

6. The specific case of the petitioner is that the subject cheque amount was issued to respondent No.1 for his business needs. It is also the specific case of the petitioner that he is a small time employee and since accused is his son-in-law, he and his wife borrowed different amounts from various persons and advanced to the accused, in-turn, the accused has handed over the subject cheques.

7. Per contra, respondent No.1 has taken a specific plea that he married the complainant's daughter in the year 2005. However, immediately after marriage he came to know that the complainant's daughter suppressed her first marriage with one Ajay, therefore, disputes arose between them leading to filing

of maintenance case, divorce petition etc., When admittedly, the marriage of respondent No.1 with complainant's daughter was performed in the year 2005 and immediately thereafter when disputes arose, the question of lending of amount under the subject cheques in the year 2008 also will not arise. That apart, respondent No.1 came up with a specific plea that the subject cheques were handed over to the daughter of the complainant while taking a bank loan. Further, respondent No.1 has also taken a plea that the petitioner does not have the financial capacity to lend such huge amount to him. When the petitioner has taken a specific plea that he and his wife have borrowed different amounts from various persons, in the light of the specific defence taken by respondent No.1, the petitioner ought to have examined some of the persons from whom he has borrowed the amounts. Therefore, in the light of the specific defence taken by respondent No.1, though there is a presumption under Section 139 of Negotiable Instruments Act, the onus automatically shifts to the petitioner to establish and prove the borrowal of amounts from different persons and payment of the same to respondent No.1.

8. From the impugned orders, it is revealed that except examining himself as PW1, the petitioner has not examined any other person more particularly, the persons from whom he has

borrowed the amounts. Even according to his evidence, when disputes arose between his family and respondent No.1 immediately after the marriage, the question of payment of the amount also throws any amount of doubt on the payment of the subject amount to respondent No.1.

9. Therefore, on perusal of the impugned order and from the arguments of the learned counsel for the petitioner, this Court is of the opinion that the petitioner miserably failed to prove the factum of payment of the cheque amounts to respondent No.1 for drawing a presumption under Section 139 of the Negotiable Instruments Act.

10. In fact, learned counsel for the petitioner also submitted that respondent No.1 ought to have proved that he has applied for loan and in that connection the subject cheques were handed over to his wife who is the daughter of the complainant. In this regard, the standard of proving a fact on the accused is not that of the prosecution i.e., proving the guilt of the accused beyond reasonable doubt. If respondent No.1 has established rebuttal evidence which appears to be probable is sufficient for shifting of onus back to the petitioner to prove that in discharge of the legally enforceable debt, the subject cheques have been issued to him.

11. In the case on hand, in the light of the specific defence taken by respondent No.1, the petitioner miserably failed to prove the onus on him.

12. Therefore, there are no merits in the Criminal Revision Case and accordingly, it is dismissed.

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

P. KESHAVA RAO,J

Date: 4.9.2018

KPM

