THE HON'BLE SRI JUSTICE P.KESHAVA RAO

CRIMINAL REVISION CASE No.549 OF 2012

ORDER:

Heard the learned counsel for the petitioner and the first respondent.

The present Criminal Revision Case is filed challenging the judgment passed in Crl.A.No.3 of 2010, dated 23.02.2010 on the file of the Court of I Additional District & Sessions Judge, Guntur, confirming the judgment passed in C.C.No.152 of 2009, dated 04.12.2009 convicting and petitioner for the offence under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act') and sentencing him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/, in default, to suffer simple imprisonment for one month.

The brief facts of the case are that the petitioner herein borrowed a sum of Rs.50,000/- from the first respondent herein on 25.01.2007 for his family expenses and executed a promissory note-Ex.P.1 on the same day. When the petitioner failed to pay the amount, on demand, he issued Ex.P.2-cheque dated 05.07.2008 towards discharge of said legally enforceable debt under Ex.P.1-promissory note. When the said cheque was presented for realisation, it was returned with an endorsement 'insufficient funds', vide Ex.P.3-cheque return memo, dated 15.12.2008. Thereupon, the first respondent, after complying with the mandatory procedure as contemplated under the provisions of the Act such as issuance of legal notice etc., filed the complaint. To support his case, the first respondent himself examined as P.W.1 and marked Exs.P.1 to P.5. After completion of evidence of first respondent, the petitioner was examined under Section 313 of Cr.P.C. explaining the incriminatory evidence brought on record against him for which, the petitioner denied the same as false. The petitioner himself examined as D.W.1 and marked Ex.D.1-counterfoil of the challan, dated 27.12.2008. The learned Magistrate, after hearing both the parties and after appreciating the evidence brought on record, convicted and sentenced the petitioner by judgment dated 04.12.2009 as aforementioned. Aggrieved by the said judgment, the petitioner filed Crl.A.No.3 of 2010 on the file of the Court of I Additional District & Sessions Judge, Guntur. In the appeal, the petitioner has not furnished the correct address of the first respondent i.e. the complainant. Since the petitioner was not appearing before the lower appellate Court, Non-Bailable Warrants were issued against him and the same were pending. The petitioner was called absent and there was no representation for him. Therefore, the appeal was dismissed by judgment dated 23.02.2010. Aggrieved by the same, the present Criminal Revision Case is filed.

Learned counsel appearing for the petitioner strenuously contended that the lower appellate Court erred in dismissing the appeal for non-appearance of his counsel and the same is not sustainable in law. The lower appellate Court ought to have passed the judgment on merits or appointed a counsel on behalf of the petitioner. The judgment of the Court below is without jurisdiction and beyond the scope of the statutory provisions.

Per contra, the learned counsel appearing for the first respondent justified the impugned judgment and sought to dismiss the Criminal Revision Case.

Having heard both the counsel and from the perusal of the material on record, it is revealed that the petitioner herein borrowed a sum of Rs.50,000/- from the first respondent and in lieu thereof, executed Ex.P.1-promissory note on the same day and later, on demand, issued Ex.P.2-cheque towards discharge of legally enforceable debt covered by Ex.P.1. When the subject-cheque was presented for realisation, it was dishonoured with an endorsement 'insufficient funds' vide Ex.P.3. The first respondent in his evidence as P.W.1, filed an affidavit in lieu of chief-examination narrating the contents mentioned in the complaint.

It is settled proposition that as per Section 138 of the Act, the initial burden lies on the drawee i.e. the complainant to prove that the subject-cheque was issued towards legally enforceable debt. Once the drawee discharges such initial burden, the onus of proof shifts on the accused to rebut the presumption under Section 139 of the Act.

In the case on hand, the first respondent, on oath, affirmed the contents of the complaint and established that the subject-cheque i.e. Ex.P.2 was issued by the petitioner towards the legally enforceable debt i.e. an amount of Rs.50,000/- borrowed by the petitioner on 25.01.2007 under Ex.P.1-promissory note. However, the petitioner came up with a rebuttal evidence that he borrowed an amount of Rs.30,000/- from one Srija in October, 2008 and discharged Rs.20,000/- in February, 2009 and in that connection, said Srija obtained two signed promissory notes and two signed blank cheques from him and one of the said promissory notes and cheques were pressed into service against him and filed a false case at the instance of said Srija. However, as seen from the record, when the first respondent issued a legal notice under Ex.P.4, the petitioner received the same as is evident from Ex.P.5-acknowledgement, however, for the reasons best known to him, he did not choose to give any reply to the said notice putting forth his plea of defence at the earliest point of time. Further during the cross-examination of P.W.1, nothing has been suggested by the petitioner to elicit that there is any relationship between said Srija and first respondent resulting in handing over of the alleged promissory note and cheque by Srija to the first respondent. When the petitioner has admitted the issuance of promissory note and the cheque and also his signatures thereon, the presumption under Section 139 of the Act is automatic and it is for the petitioner to prove otherwise. Though the petitioner has taken a specific defence that the subject-cheque was issued to said Srija, he has miserably failed to establish the said aspect. In that view of the matter, this Court is of the opinion that the petitioner failed to discharge the onus by producing any cogent evidence. Therefore, this Court is not inclined to interfere with the impugned judgments of the Courts below. As such there are no merits in the Criminal Revision Case and the same is liable to be dismissed. At this juncture, the learned counsel for the petitioner brought to the notice of this Court that the lower appellate Court, has not passed the orders on merits. From the perusal of the facts of the case, the amount was borrowed in the year 2007 i.e. about 11 ½ years back.

Still the first respondent is yet to receive the said amounts. Though there is some force in the contention of the learned counsel for the petitioner, looking at the peculiar facts and circumstances of the case, particularly, the conduct of the petitioner in not appearing before the Court below and not pursuing the appeal, he is not entitled for any indulgence from this Court.

Accordingly, the Criminal Revision Case is dismissed.

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

P.KESHAVA RAO,J

11th OCTOBER 2018.
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