

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.2636 OF 2014

ORDER:

Heard the learned counsel for the petitioners.

The present Criminal Revision Case is filed questioning the judgment passed in CrI.A.No.592 of 2012 dated 16.10.2014 on the file of the III Additional Metropolitan Sessions Judge, Hyderabad confirming the judgment passed in C.C.No.31 of 2011, dated 13.06.2012 on the file of XV Special Magistrate, Hyderabad convicting the petitioners for the offence under Section 138 of Negotiable Instruments Act, 1881 and sentencing the first petitioner to pay a fine of Rs.5,000/-, in default, directing the second petitioner to undergo one month rigorous imprisonment; and also sentencing the second petitioner to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for one month.

The facts, in brief, are that under a construction agreement dated 10.08.2007, the complainant-second respondent herein agreed to construct a shed at the rate of Rs.600/- and Rs.500/- per square feet in respect of building, comprising of ground and first floor. Towards the said transaction, the total amount due from the petitioner to the second respondent was Rs.1,17,33,405/- . Out of the said amount, a sum of Rs.76,79,856/- was paid by the petitioners to the second respondent and after availing concession of Rs.3,43,000/-, for the balance amount, the petitioners have issued the subject four cheques towards the said legally enforceable debt in favour of the second respondent. When

the said cheques were presented for realisation, they were returned unpaid with an endorsement 'account closed'. After complying with the mandatory procedure, the complaint was lodged. In the complaint, the petitioners have taken a specific plea that the subject-cheques were issued to one K.Nukaraju as the second respondent took hand loan from said K.Nukaraju and the said cheques were given as collateral security. However, the second respondent fraudulently obtained the said cheques from said K.Nukaraju and filed the false case.

Under the provisions of Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), when it is admitted that the subject-cheques have been issued towards the legally enforceable debt, the presumption under Section 139 of the Act is automatic. In the case on hand, the petitioners have accepted that they entered into a construction agreement with the second respondent dated 10.08.2007 whereunder they are liable to pay a sum of Rs.1,17,33,405/-. Out of the said amount, they have paid Rs.76,79,856/- and for the balance amount, the subject-cheques have been issued. However, the petitioners have taken a specific stand that the subject-cheques have been issued towards collateral security to one K.Nukaraju, from whom, the second respondent has obtained a loan. When once the petitioners have come out with a specific defence, it is for them to prove that the subject-cheques have been issued to the said K.Nukaraju. Admittedly, from the perusal of the material on record, it is revealed that the said K.Nukaraju was not examined by the petitioners. Since the onus lies on the petitioners in view of the specific defence taken by them and when the same is not discharged, it cannot be said that

the second respondent has not established the said legally enforceable debt. The Courts below also while appreciating the said aspect, held that non-examination of K.Nukaraju is detrimental to the interests of the petitioners. That apart, the scope of revision under Section 397 & 401 of Cr.P.C. is very limited. Unless and until the petitioners establish any perversity or illegality on the face of the record with regard to the findings arrived at by both the Courts below, the petitioners cannot succeed in attempting to find fault with the said findings. In the case on hand, no such perversity or illegality on the face of the record is pointed out. Therefore, this Court is of the opinion that there are no merits in the Criminal Revision Case and the same is liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed.

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

P.KESHA VA RAO,J

17th SEPTEMBER 2018.

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