

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.978 OF 2006

ORDER:

This revision is filed by the petitioner-accused under Sections 397 and 401 Cr.P.C. challenging the judgment, dated 23.08.2005 in CrI.A.No.96 of 2005 on the file of the IV Addl. Metropolitan Sessions Judge, Hyderabad, in confirming the conviction of the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and sentencing him to undergo simple imprisonment for six months and to pay a fine of Rs.3,000/-, in default to suffer simple imprisonment for one month, recorded by the XVII Metropolitan Magistrate, Hyderabad, vide judgment, dated 17.03.2005 in C.C.No.1034 of 2001.

2. Learned counsel for the petitioner-accused would submit that there is no legally acceptable evidence to convict the accused for the offence punishable under Section 138 of the Act and ultimately, prayed for set aside the conviction and sentence recorded against the petitioner-accused.

3. No representation on behalf of the 1st respondent-complainant.

4. As per the evidence of P.W.1, he advanced loan of Rs.75,750/- to the accused on 18.03.2001. The accused said to have obtained loan to meet his domestic needs. There is also evidence to show that to discharge the debt, the accused issued Ex.P1-cheque for Rs.75,750/-. When the cheque was presented before the bank for encashment, the same was returned with an endorsement as 'insufficient funds' in the account of the accused. Thereafter, a notice was issued to the accused under Ex.P5. In spite of the same,

no amount was paid to the complainant. The burden lies on the accused to show that there is no subsisting liability and Ex.P1-cheque was not given to discharge legally enforceable debt. There are also inconsistencies in the evidence of accused, who was examined as D.W.1, chit business alleged to have been carried by the complainant. The accused did not file a single document to show that he joined in the chit for Rs.1,00,000/- and Ex.P1-cheque was given in a chit transaction. There is specific evidence of P.W.1 that he advanced loan of Rs.75,750/-to the accused to meet the domestic needs and the accused has given Ex.P1-cheque for the said amount. There is ample evidence to show that Ex.P1-cheque was returned for want of sufficient funds in the account of the accused. Merely because the complainant has not filed any document to show the amount lent to the accused, that itself is not a ground to brush aside the case of the complainant. Both the Courts below have appreciated the facts and circumstances of the case in right perspective. There is no mis-carriage of justice. There is no infirmity in the judgments of the Courts below. The revision is devoid of merit and is liable to be dismissed.

5. Accordingly, the Criminal Revision Case is dismissed confirming the judgment, dated 23.08.2005 in CrI.A.No.96 of 2005 on the file of the IV Addl. Metropolitan Sessions Judge, Hyderabad. Miscellaneous petitions, if any pending in this Revision shall stand closed.

DR.SHAMEEM AKTHER, J

DATED: 09-04-2018.
Hsd