

* THE HONOURABLE SRI JUSTICE P. KESHAVA RAO

+CRIMINAL REVISION CASE No. 73 OF 2010

% 10-10-2018

Tadikonda Rama Kishore

...Petitioner

Vs.

\$ State of A.P. rep. by P.P. High Court of A.P.
Hyderabad and another

... Respondents

!Counsel for the petitioner : Sri Sravan Kumar Mannava

^ Counsel for the Respondents: Sri C.Sharan Reddy,
Counsel for respondent No.2

< Gist :

> Head Note:

? Cases referred:

1. (2005) 2 SCC 217
2. (2008) 8 SCC 536
3. 2002 (1) ALD (CrI.) 344 (AP)
4. 1998 (2) ALD (CrI.) 297 (Guj.)
5. (1999) 2 SCC 452



THE HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE NO. 73 OF 2010

ORDER:

Heard the learned counsel for the petitioner as well as the learned counsel for respondent No.2.

2. The present Criminal Revision Case is filed challenging the judgment in Criminal Appeal No.26 of 2009 dated 26.10.2009 on the file of the Court of IX Additional Sessions Judge (FTC), Guntur, confirming the judgment in C.C.No.184 of 2000 in convicting the petitioner for the offence under Section 138 of Negotiable Instruments Act.

3. The facts in brief are that respondent No.2 herein filed a complaint against the petitioner vide C.C.No.184 of 2000 stating that the petitioner herein and his wife borrowed an amount of Rs.2,00,000/- through cheque No.015352 drawn on Indian Bank, Gujjanagundla, dated 30.11.1994 agreeing to repay the same with interest @ 24% p.a. with yearly rests. Later when respondent No.2 demanded for refund of the said amount, the petitioner gave cheque bearing No.671049 drawn on State Bank of India, Guntur, dated 30.10.1999 for Rs.4,00,000/- to respondent No.2 towards part payment. When respondent No.2 presented the said cheque for realization in his bank i.e., Bank of Baroda on 18.11.1999, it was dishonoured on 25.11.1999 with an endorsement, "insufficient funds" in the account of the petitioner. Respondent No.2, after complying with the mandatory procedure as contemplated under the

provisions of the Act, such as issuance of legal notice etc., filed the above said complaint. After the petitioner appeared in the above said Calendar Case, in compliance with the procedure under Section 207 Cr.P.C. the petitioner was furnished with the copies of the complaint and the material enclosed thereto. On examination under Section 251 Cr.P.C. for the offence under Section 138 of Negotiable Instruments Act, the petitioner pleaded not guilty and claimed to be tried. In order to prove its case, respondent No.2 examined PW1 and got marked Exs.P1 to P8 on its behalf. After closure of the evidence of respondent No.2, the petitioner was examined under Section 313 Cr.P.C. by informing about the incriminating evidence brought on record against him, which, he denied and reported no evidence. The learned IV Additional Junior Civil Judge, Guntur, after hearing both the parties and analyzing the evidence brought on record, by judgment dated 5.1.2009, sentenced the petitioner to undergo simple imprisonment for a period of six months and to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for a period of two months. Aggrieved by the said judgment, the petitioner filed Criminal Appeal No.26 of 2009 on the file of the Court of IX Additional Sessions Judge (FTC), Guntur. Learned Additional Sessions Judge, after hearing, dismissed the appeal by judgment dated 26.10.2009, confirming the judgment of the Court below. Aggrieved by the same, the present Criminal Revision Case is filed.

4. Sri Sasanka Bhuvanagiri, learned counsel appearing for the learned counsel for the petitioner strenuously contended that both the Courts below committed a material irregularity in sentencing the petitioner for the offence under Section 138 of Negotiable Instruments Act since the complaint itself is not maintainable in law since respondent No.2 got filed the complaint through a power of attorney holder. He also contended that as per Order 30 CPC even in the case of a proprietary concern where a single person carries on business in the name and style other than his own name, he can sue or be sued and the same analogy can be drawn in the absence of specific provision in the Criminal Procedure Code. Respondent No.2 failed to examine the bank officials and, therefore, the conviction cannot be based on the sole testimony of respondent No.2. Both the Courts below did not appreciate the evidence in proper perspective.

5. Per contra, learned counsel for respondent No.2 supported the impugned judgment and contended that there is no irregularity or illegality in the order passed by both the Courts below.

6. Learned counsel for the petitioner, to support his contention, relied on the judgment in the case of *JANKI VASHDEO BHOJWANI AND ANOTHER vs. INDUSIND BANK LTD. AND OTHERS*¹. The facts of the said case and the ratio laid down therein are not applicable to the facts of the present case. He also relied on the judgment in the case of *SHANKAR FINANCE AND*

¹ (2005) 2 SCC 217

*INVESTMENTS vs. STATE OF ANDHRA PRADESH AND OTHERS*². In the said judgment, the complaint was not filed by the proprietor of the payee concern but it was signed by the power of attorney holder. But in the case on hand, the complaint has been filed by the proprietary concern itself. Therefore, the said judgment is also not applicable to the facts of the present case.

7. On the other hand, learned counsel for respondent No.2 relying on the judgment in the case of *Y. VENKATA REDDY vs. JAGADAMBA ENTERPRISES, HYDERABAD AND ANOTHER*³, submitted that a person can represent the Corporation even on an authorization letter and it does not require any supporting resolution to be passed by the concern. In the said judgment, the relevant portion is as under:

“7. As can be seen from the description of the complainant as given in the complaint, the complainant is M/s. Jagadamba Enterprises, the name of the business concern under which the proprietor thereof has been carrying on business. When under Civil law the person, who is individually carrying on business in a name other than on his own, can sue or be sued in the name of the concern, I see no reason as to why a different procedure is to be followed in a criminal complaint. Obviously, M/s. Jagadamba Enterprises is a body corporate and, therefore, it is a juristic person. It shall be represented by a corporeal person. So when M/s. Jagadamba Enterprises is the *de jure* complainant, there shall be a *de facto* complainant to represent the same before a Court of Law.

² (2008) 8 SCC 536

³ 2002 (1) ALD (CrL.) 344 (AP)

That *de facto* complainant may be either the proprietor thereof or any other person who has been authorised specifically in regard thereto. For the foregoing reasons, the contention of the learned Counsel appearing for the revision petitioners cannot be countenanced.

8. *Apropos* the second contention that the Manager who has been authorised here by means of an authorisation letter is not competent to represent the firm, the learned Counsel again seeks to draw the distinction between a power of attorney whereunder an agent is duly authorised and a mere authorisation letter. In the former case, there is no difficulty, as rightly conceded by the learned Counsel, that the law is now settled that the agent having been authorised under a power of attorney can represent the concern. His serious objection is only as regards the latter category of cases where as authorisation letter has been executed. The petition is no more *res integra* in view of the latest judgment of the Apex Court in *MMTC Limited v. M/s. Medchal Chemicals and Pharma Private Limited*, 2001 AIR SCW 4793. The Apex Court held as mentioned hereunder:

“If any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complaint requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. The only eligibility criterion prescribed by Section 142 is that the complaint under Section 138 must be by the payee or the holder in due course of the said cheque. This criterion is satisfied as the complaint is in the name and on behalf of the appellant Company who is the payee of the cheque. Merely because complaint is signed and presented by a person, who is neither an authorised agent nor a person empowered under the Articles of Association or by any resolution of the Board to do so is no ground to quash the complaint. It is open to the *de jure* complainant company to seek permission of the Court for sending any other person to represent the company in the

Court. Thus, even presuming, that initially there was no authority, still the company can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company.”

9. In view of the authoritative pronouncement of the Apex Court excerpted hereinabove, the contention of the learned Counsel for the petitioner merits no consideration. But then, the learned Counsel seeks to distinguish the judgment on facts on the premise that the judgment pertains to a company or group of individuals unlike in the instant case where it is a proprietary concern. At page 4797 in middle of para 12, the Apex Court extracted the relevant observations made by it in an earlier judgment in *Associated Cement Company Limited v. Keshvanand*, (1998) 1 SCC 687, as excerpted hereunder:

“It is held that when the complainant is a body corporate it is the *de jure* complainant, and it must necessarily associate a human being as *de facto* complaint to represent the former in Court proceedings.”

10. Undoubtedly, as can be seen from the description of the complainant in the complaint, it is M/s. Jagadamba Enterprises, which is no doubt a proprietary concern and therefore is a juristic person. This being a body corporate, it shall have to necessarily be represented by a corporeal person. In that view of the matter, I see no merits in the contentions raised by the learned counsel. The legal position is now settled in view of the judgment of the Apex Court referred to supra that a person can represent the corporate even on an authorisation letter and it does not require any supporting resolution to be passed by the concern. Therefore, there is no substance in the contentions raised in this batch of cases.”

8. Learned counsel for respondent No.2 also relied on the judgment in the case of *GEEKAY EXIM (INDIA) LTD. V. STATE OF GUJARAT*⁴. In the said judgment, it has been held as under:

“10. An identical question arose for consideration before the Madras High Court in the case of *Sagayadurai v. J.D. Electronics* reported in 1997 (2) Crimes 115 wherein the Court held that, in case of a firm, Manager is authorised to sign documents, agreements, therefore the complaint filed by the Manager on behalf of the firm is legal and valid and it cannot be stated that the Manager representing the Company shall obtain a special permission or authorisation from the Company and file it along with the complaint. While dealing with the scope of Section 138 of the Act and competency of a person to file complaint, it is held by the Madras High Court in the case of *Sudesh Kumar Sharma v. K.S. Selvamani*, reported in 1994 (4) CCR 2374 that a complainant must necessarily be a payee or holder in due course and if the complaint is filed by Manager in his personal capacity then authorisation is required. In that case, the complaint was not filed in the name of legal entity but in the name of Manager representing the interests of legal entity. Since Manager who filed the complaint was not the payee or holder in due course, the Court held that authorisation is necessary. In the case of *Ruby leather Exports v. V.K.Venu rep. Vandana Chemicals* reported in 1993 Madras Weekly Notes 249 it has been held that a power of attorney, agent or a person authorised in writing by the payee or the holder in due course of a cheque is a competent person to make a complaint in writing under Section 142 of the Act. On facts, it was held that, as

⁴ 1998 (2) ALD (CrL.) 297 (Guj.)

prosecution was initiated by the complainant in his personal name for and on behalf of the corporate body and not in the name of Company, authorisation was required and ought to have been produced before the Court before taking cognizance. As no such authorisation was produced before taking cognizance, the complaint was held as barred under Section 142 of the Act and required to be quashed.”

9. Learned counsel for respondent No.2 also contended that the petitioner raised the maintainability of the complaint on the basis that respondent No.2 was represented by a power of attorney holder and the same was appreciated and rejected by this Court in Criminal Petition No.646 of 2002 dated 14.3.2002. Therefore, the petitioner is not entitled to raise the said issue once again. To support his contention, he relied on the judgment in the case of *STATE OF KERALA vs. PUTTUMANA ILLATH JATHAVEDAN NAMBOODIRI* ⁵. In the said judgment, it has been held as under:

“5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But

⁵ (1999) 2 SCC 452

the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence.”

10. Having heard both the counsel and from the perusal of the material on record, it is revealed that the petitioner and his wife borrowed a sum of Rs.2,00,000/- from respondent No.2. Towards discharge of the said legally enforceable debt, they have issued the subject cheque for a sum of Rs.4,00,000/-. On presentation, the

same has been dishonoured with an endorsement "insufficient funds" leading to filing of the above said complaint.

11. Now coming to the contention of the learned counsel for the petitioner that the complaint is not maintainable since it is not signed by respondent No.2, the law is well settled as stated supra. That apart, the petitioner has already raised the similar issue in earlier proceedings in Criminal Petition No.646 of 2002 and this Court, after considering, negated the same. The petitioner has not carried the matter in appeal and thereby it has become final and binding on the petitioner. When that be so, this Court is of the opinion that the petitioner cannot raise a similar issue in the present proceedings. As such, the complaint as filed by respondent No.2. represented by the power of attorney holder, is maintainable in law. Therefore, this Court finds that there is no irregularity or illegality in the orders passed by both the Courts below.

12. There are no merits and the Criminal Revision Case is liable to be dismissed.

13. Accordingly, the Criminal Revision Case is dismissed.

14. At this stage, learned counsel for the petitioner submitted that the petitioner is suffering with hyper tension and diabetes and he is aged about 65 years and, therefore, he requested this Court to have sympathy and show some lenience with regard to the sentence of imprisonment.

15. Learned counsel for respondent No.2 though opposed the said plea, left it open to this Court as far as sentence of imprisonment is concerned.

16. Looking into the totality of the facts and circumstances of this case, this Court while confirming the conviction awarded by the lower appellate Court, reduce the sentence to three months from six months as awarded by the IX Additional Sessions Judge (FTC), Guntur.

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

Date: 10.10.2018

NOTE:

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KPM

P. KESHAHA RAO,J

