THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.1550 of 2006

ORDER:

Heard the learned counsel for the petitioner. There is no representation on behalf of respondent-complainant. Perused the evidence on record.

2. This Criminal Revision Case by the petitioner-accused under Sections 397 and 401 Cr.P.C. is directed against the judgment dated 14.09.2006 in Criminal Appeal No.46 of 2006 on the file of the IV Additional Sessions Judge, Warangal.

3 The respondent No.1-complainant filed a complaint against the petitioner-accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'NI Act'), alleging as follows.

On 01.07.2002, the accused borrowed Rs.1,00,000/- from the complainant and executed a promissory note in his favour agreeing to repay the same with interest @ 24% per annum and paid interest till end of December, 2002. On 21.1.2003, the accused again borrowed Rs.20,000/- from the complainant and executed another promissory note and paid interest up to February, 2003. Thereafter, inspite of several demands, the accused issued a cheque bearing No.910696, dated 07.11.2003 drawn on State Bank of India, Shivanagar branch, Warangal, for Rs.1,20,000/- towards discharge of the debt due. When the cheque was presented by the complainant for encashment on 13.11.2003, it was dishonoured vide banker's memo dated 25.11.2003 on the ground that the account was closed. After issuing the statutory notice dated 27.11.2003, which was received by the accused on 29.11.2003, as the accused did not pay the amount covered under the dishonoured cheque within the time stipulated under Section 138 of the NI Act, the present complaint was lodged before the I Additional Judicial Magistrate of First Class, Warangal.

4. The learned Magistrate took cognizance of the case for the offence punishable under Section 138 of the NI Act against the accused, and when he was examined under Section 251 Cr.P.C., he denied the accusation levelled against him, pleaded not guilty and claimed to be tried.

5. To substantiate his case, complainant examined himself as P.W.1 and got marked Exs.P1 to P5 on his behalf.

6. After closure of the prosecution evidence, accused was examined under Section 313 Cr.P.C. with reference to the incriminating evidence found against him in the evidence of complainant witnesses. He denied the same. No oral or defence evidence was adduced on behalf of the accused.

7. The trial Court, vide judgment dated 09.05.2006, found the accused guilty of the offence punishable under Section 138 of the NI Act, accordingly, convicted him of the said offence and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.5,000/- in default to suffer further simple imprisonment for a period of two months. Challenging the same, the accused preferred the above appeal. The appellate Court dismissed the appeal vide the impugned judgment. Challenging the same, the present revision came to be filed by the accused.

8. Learned counsel for the petitioner-accused would contend that there is no legally enforceable debt or liability; that there are inconsistencies, contradictions and omissions in the evidence of P.W.1 with regard to issue of subject cheque; that both the courts below did not appreciate the facts and circumstances of the case and came to erroneous conclusions, and ultimately, prayed to allow the revision as prayed for.

9. Now the point that arises for consideration is whether the findings of both the courts below are legal, proper and correct?

10. Revisional jurisdiction of this Court under Section 401 Cr.P.C. is a truncated one. Unless the findings are based upon no evidence or perverse, or that inadmissible evidence was taken into consideration in convicting the accused or that admissible evidence was overlooked, normally the revisional powers cannot be exercised to disturb the concurrent findings of the two courts below.

11. It is the case of the complainant that the accused issued a cheque bearing No.910696, dated 07.11.2003 drawn on State Bank of India, Shivanagar branch, Warangal, for Rs.1,20,000/- in favour of complainant towards discharge of the amounts due by him under two promissory notes, and when the cheque was presented by the complainant for encashment through his banker, it was dishonoured vide banker's memo dated 25.11.2003 on the ground that the account was closed. After issuing the statutory notice dated 27.11.2003, which was received by the accused on 29.11.2003, as the accused did not pay the amount covered under the dishonoured cheque within the

time stipulated under Section 138 of the NI Act, the present complaint was lodged.

12. To substantiate his case, the complainant examined himself as P.W.1 and got marked Ex.P1-original cheque dated 07.11.2003; Ex.P2-cheque return memo dated 13.11.2003; Ex.P3-cheque return memo dated 24.11.2003; Ex.P4-office copy of legal notice and Ex.P5-served acknowledgement card.

13. The evidence on record reveals that the accused is a friend of P.W.1. On two occasions, he borrowed amount from the complainant totally Rs.1,20,000/- and executed promissory notes, and for discharge of the said amount, issued the subject cheque Ex.P1 for Rs.1,20,000/- on 7.11.2003. When the said cheque was presented by the complainant, it was returned with endorsement 'account closed'. The complainant got issued statutory notice under Ex.P4 and it was served on the accused under Ex.P5-acknowledgement. As, even after receipt of the statutory notice, the accused did not pay the amount covered under the dishonoured cheque, the present complaint was lodged. Nothing has been elicited in his cross-examination to disbelieve version of P.W.1. His evidence remained unshaken.

14. A presumption can safely be drawn in favour of the complainant with regard to passing of consideration in view of Section 118 of the NI Act. The presumption under Section 139 of the NI Act is also available in favour of the complainant that the cheque in question was issued for discharge, in whole or in part, of any debt or other liability. Defence of the accused is that he repaid entire loan amount and thereafter issued Ex.P1-cheque and that no amount is

due to the complainant. There is no iota of evidence to show that the loan obtained by the accused was repaid either before or after filing of the complaint. The accused failed to rebut the said presumption. The accused did not enter into witness box or file any document, to substantiate his defence. Hence, it can be held that the accused failed to rebut the said presumption.

15. Both the courts below rightly appreciated the entire evidence on record and recorded a finding that there is a legally enforceable debt. There is ample evidence to substantiate the averments of the complaint. The requirements to punish the accused for the offence punishable under Section 138 of the NI Act are proved. Both the Courts below elaborately dealt with the oral and documentary evidence and acted on the basis of the admissible evidence on record, and rightly found the accused guilty of the offence punishable under Section 138 of the NI Act. The findings of the Court below are based on proper appreciation of evidence on record. There is nothing to take a different view. There is no illegality or miscarriage of justice. There are no grounds to interfere with the same. The revision case is devoid of merit and is liable to be dismissed.

16. As regards sentence, the learned counsel for the petitioner submits that the accused is aged about 60 years and the transaction relates to the year 2002, and prays to take a lenient view with regard to quantum of sentence of imprisonment. The trial Court imposed sentence of rigorous imprisonment for one year and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for two months. In appeal, the Court of Session confirmed the same. The subject transaction pertains to the year 2002.

16 years elapsed. In the circumstances and considering the age of the accused, which is a mitigating circumstance to take a lenient view, the sentence of imprisonment imposed against the accused is modified as simple imprisonment for six months while maintaining the fine and default sentence.

17. With the above modification in sentence, the Criminal Revision Case is dismissed. The trial Court is directed to take consequential steps in pursuance of the dismissal of the present revision.

(Dr. Shameem Akther, J)

24.04.2018
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