

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.1026 of 2006

ORDER:

Heard the learned counsel for the petitioner and perused the record.

2. The petitioner-accused did not choose to implead the complainant as a party to this revision inspite of direction by this court dated 23.12.2013. It is an old revision. It can be disposed on merits.

3. This Criminal Revision Case by the petitioner-accused under Sections 397 and 401 Cr.P.C. is directed against the judgment dated 09.06.2006 in Criminal Appeal No.9 of 2005 on the file of the Special Judge for Economic Offices-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad (hereinafter referred to as 'the appellate Court'), whereby the learned Sessions Judge dismissed the appeal confirming the conviction and sentence recorded against the petitioner-accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 in the Judgment dated 22.12.2004 in C.C. No.713 of 2003 on the file of the V Metropolitan Magistrate, Hyderabad. (hereinafter referred to as 'the trial Court').

4. The 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.

In the month of January, 2003, the petitioner-accused borrowed a sum of Rs.1,43,000/- from the complainant, and after repeated demands, issued Exs.P1

and P2 cheques for Rs.71,500/- each. When the said cheques were presented, they were returned unpaid with endorsement 'funds insufficient' through Exs.P3 and P4- cheque return memos. Thereafter, the complainant got issued statutory notice Ex.P5. After receipt of the same, the petitioner-accused got issued Ex.P8-reply notice. As the petitioner-accused did not pay the amount covered under the dishonoured cheques within the time stipulated under Section 138 of the NI Act, the present complaint was lodged before the V Metropolitan Magistrate, Hyderabad.

5. The learned Magistrate took cognizance of the case for the offence punishable under Section 138 of the NI Act against the petitioner-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.

6. To substantiate his case, complainant examined himself as P.W.1 and got marked Exs.P1 to P8 on his behalf.

7. After closure of the prosecution evidence, petitioner-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. On behalf of defence, D.Ws.1 and 2 were examined but no documents were got marked on his behalf.

8. The trial Court, vide judgment dated 22.12.2004, found the petitioner-accused guilty of the offence punishable under Section 138 of the NI Act, accordingly, convicted him of the said offence and sentenced to undergo simple imprisonment for a period of six months and to pay

fine of Rs.5,000/- in default to suffer simple imprisonment for a further period of two months. Challenging the said conviction and sentence, petitioner-accused preferred Criminal Appeal No.9 of 2005 before the appellate Court, which, vide the impugned judgment, dismissed the appeal confirming the conviction and the sentence recorded by the trial Court. Challenging the same, the present revision came to be filed by the accused.

9. Learned counsel for the petitioner-accused would contend that there is no money transaction between the petitioner-accused and the complainant, and the subject cheques were not issued towards discharge of a legally enforceable debt or liability; that the Courts below had not properly appreciated the evidence of D.Ws.1 and 2 and convicted and sentenced the petitioner-accused. It is his further contention that the subject cheques were obtained from the petitioner-accused by force.

10. In view of the submissions made by the learned counsel for the petitioner, the point that arises for consideration is whether the findings of both the courts below are legal, proper and correct?

11. 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.

12. It is the case of the complainant the petitioner-accused issued Exs.P1 and P2 cheques for Rs.71,500/-

each towards discharge of debt borrowed by him from the complainant in the month of January, 2003, and when the said cheques were presented, they were returned unpaid with endorsement 'funds insufficient' through Exs.P3 and P4-cheque return memos. Thereafter, after complying the legal formalities under Section 138 of the NI Act as the petitioner-accused did not pay the amount covered under the dishonoured cheques within the time stipulated under Section 138 of the NI Act, the present complaint was lodged.

13. To substantiate his case, the complainant examined himself as P.W.1 and Exs.A1 to A.8 were marked through him. There is clear and categorical evidence of P.W.1 with regard to the petitioner-accused borrowing Rs.1,43,000/- from the complainant in the month of January, 2003 and issuing Exs.P1 and P2-cheques towards discharge of the said debt. There is also evidence of P.W.1 with regard to friendship between P.W.1 and the petitioner-accused. Further, from the evidence of P.W.1 and recitals in Exs.P3 and P4, it is clear that the said cheques were returned by the Banker with endorsement 'funds insufficient'. P.W.1 got issued statutory notice under Ex.P5. The petitioner-accused got issued reply notice under Ex.P8. Nothing has been elicited in the cross-examination of P.W.1 to disbelieve his version. His version remained unshaken.

14. Defence of the petitioner-accused is that the subject cheques Exs.P1 and P2 were obtained forcibly and were not given for discharge of a legally enforceable debt or liability. D.Ws.1 and 2, who are friends of the petitioner-accused, deposed that the cheques were obtained from the petitioner-accused forcibly in the month of February, 2003.

This version appears to be improbable. Exs.P1 and P2 cheques are dated 4.3.2003 and 4.4.2003. It is not the defence that post-dated cheques were obtained by the complainant. Further more, the petitioner-accused did not come to the witness box to depose about the same. No report was lodged to police with regard to the alleged forcibly obtaining the cheques from the petitioner-accused by the complainant. Had the contention of the petitioner-accused is true, he would have lodged a report before the police concerned immediately. Even after filing of the present complaint, he did not do so. The evidence of D.Ws.1 and 2 is not acceptable as they are friends of petitioner-accused. Therefore, there is no basis to believe the said contentions. Exs.P1 and P2 would reveal that the cheques were drawn for Rs.71,500/- each in favour of the complainant. There are cheque return memos to show about the return of the cheques by the bank for want of sufficient funds.

15. Further more, in view of the fact that the petitioner-accused admitted his signatures on Exs.P1 and P2-cheques, a presumption can safely be drawn 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 cheques in question were issued for discharge, in whole or in part, of any debt or other liability. The petitioner failed to rebut the said presumptions. Under these circumstances, it cannot be held that there is no legally enforceable debt or liability. There is ample evidence to substantiate the averments of the complaint. Both the Courts below elaborately dealt with the oral and documentary evidence and rightly found the petitioner-accused guilty of the

offence punishable under Section 138 of the NI Act. The findings of the Court below are based on legally acceptable evidence. 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. In the result, the Criminal Revision Case is dismissed. The trial Court is directed to take consequential steps in pursuance of the dismissal of the present revision.

11.04.2018
DRK



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