

THE HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE NO. 14 OF 2013

ORDER:

The present Criminal Revision Case is filed questioning the judgment passed in CrI.A.No.220 of 2012 dated 3.12.2012 on the file of the Court of the VIII Additional Sessions Judge (Fast Track Court), East Godavari district, Rajahmundry, confirming the judgment passed in C.C.No.350 of 2011 dated 12.6.2012 on the file of the Court of the VI Additional Judicial Magistrate of First Class, Rajahmundry, convicting the petitioner for the offence under Section 138 of Negotiable Instruments Act.

2. The facts in brief are that the petitioner herein borrowed an amount of Rs.3,50,000/- from respondent No.2 herein on 14.3.2000 in order to discharge her sundry debts and in that context executed a promissory note agreeing to repay the said amount with interest @ 24% p.a. When the petitioner failed to pay the said amount, on the insistence of respondent No.2 herein, petitioner issued a cheque bearing No.081836 on 7.3.2011 for Rs.3,00,000/- in favour of respondent No.2 drawn on State Bank of India, Innespeta, Rajahmundry. When the said cheque was presented for realization, the same has been returned with an endorsement "insufficient funds" through a

cheque return memo dated 10.3.2011. Thereafter, respondent No.2 got issued a legal notice on 22.3.2011 calling upon the petitioner herein to pay the cheque amount within 15 days from the date of receipt of the said legal notice. The petitioner received the said notice on 26.3.2011 and got issued a reply notice dated 8.4.2011 with false and baseless allegations which include that the said cheque has been forged by respondent No.2. In those circumstances, respondent No.2 filed a complaint against the petitioner for the offence under Section 138 of Negotiable Instruments Act. The learned Magistrate, after taking cognizance of the said offence against the petitioner, numbered the case as C.C.No.350 of 2011. Respondent No.2, to prove his case, examined himself as PW1 and examined another person by name P.Yedukondalu as PW2, the concerned Bank Manager as PW3 and got marked Exs. P1 to P8. The petitioner has neither produced any defence evidence nor got marked any documents. The learned Magistrate, after hearing the matter and appreciating the evidence brought on record, convicted the petitioner herein for the offence under Section 138 of Negotiable Instruments Act by judgment dated 12.6.2012. Aggrieved by the same, the petitioner filed an appeal vide CrI.A.No.220 of 2012 on the file of the Court of the VIII Additional Sessions Judge (Fast Track

Court) East Godavari district, Rajahmundry. In the appeal also, after hearing, the contention of the petitioner was not accepted and the learned Additional Sessions Judge, was pleased to dismiss the appeal by judgment dated 3.12.2012, confirming the conviction awarded by the Court below. Aggrieved by the said judgment, the present Criminal Revision Case is filed.

3. From a perusal of the material on record, the undisputed facts are that the petitioner herein obtained a sum of Rs.3,50,000/- on 14.3.2000 from respondent No.2 in order to discharge her sundry debts and in that connection, she executed a promissory note agreeing to repay the said amount @ 24% p.a. towards interest. Having failed to pay the said amount, the petitioner issued the subject cheque for a sum of Rs.3,00,000/- in favour of respondent No.2. When the said cheque was presented for realization, the same has been dishonoured with an endorsement "insufficient funds" leading to filing of a complaint. During the course of examination of respondent No.2, the petitioner has taken a specific plea that she has not taken any amount from the petitioner and the subject cheque was forged by respondent No.2. When the petitioner has taken such a specific plea, after completion of the evidence of respondent No.2, she has not come into the

witness box and she has neither examined herself as a witness nor examined any other witness to rebut the presumption drawn against her under Section 139 of Negotiable Instruments Act. The petitioner, having taken a specific plea, failed to produce any evidence. Therefore, both the Courts below, have convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act. In these circumstances, this Court does not find any merit in the Criminal Revision Case and the same is liable to be dismissed.

4. Accordingly, Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall stand dismissed.

Date: 16.8.2018

KPM

P. KESHA RAO, J

