THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.379 of 2007

ORDER:

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

2. Learned counsel for the petitioner requests to refer the matter to Lok Adalat for settlement contending that the parties settled the dispute outside the Court and there are documents to show the same. The respondent-complainant is absent and there is no representation on its behalf to state that there was a compromise as contended by the learned counsel for the petitioner. As seen from the proceedings in the case, the matter was earlier referred to Lok Adalat on two occasions, but as the parties did not come forward for settlement, the matter was not settled. Therefore, it cannot be held that there is a compromise between the parties so as to set aside the impugned judgment.

3. This Criminal Revision Case by the petitioner-accused under Sections 397 and 401 Cr.P.C. is directed against the judgment dated 08.02.2007 in Criminal Appeal No.265 of 2006 on the file of the Additional Metropolitan Sessions Judge for the trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge, Nampally, Hyderabad.

4. 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 08.10.1999, the accused borrowed a sum of Rs.30,000/- from the complainant and executed Ex.P5-promissory note agreeing to repay the same with interest @ 24% per annum, and to discharge the said debt, he issued a cheque bearing No.107489, dated 31.05.2000 for Rs.30,000/-. When the said cheque was presented for collection, it was returned with endorsement 'insufficient funds' under Ex.P7-cheque return memo dated 03.06.2000. After issuing the statutory notice, 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 IV Additional Chief 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 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 P15 on its behalf.

7. 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.

8. The trial Court, vide judgment dated 29.06.2006, 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 imprisonment for a period of six months and to pay fine of Rs.5,000/- in default to suffer further simple imprisonment for a period of one month. 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.

9. Learned counsel for the petitioner-accused would contend that the accused is not due any amount to respondent-complainant; that the complaint is filed with all false and baseless allegations; that there is no legally enforceable debt; that both the courts below erroneously came to the conclusion that the accused committed the offence punishable under Section 138 of the N.I. Act, accordingly convicted and sentenced for the said offence; that there is no legally acceptable evidence to find the accused guilty of the offence alleged; that the court below did not properly appreciate the documents filed on behalf of the complainant, and ultimately, prayed to allow the revision as prayed for.

10. There is no representation on behalf of the respondent-complainant. It is a revision of the year 2007. In the circumstances, it can be disposed of on merits.

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

12. 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.

13. Though the learned counsel for the accused contended that there was compromise between the parties and the accused is not due any amount to the complainant, no iota of evidence is filed to substantiate the same.

14. It is the case of the complainant that it is a registered firm doing finance business. On 08.10.1999, the accused borrowed a sum of Rs.30,000/- from the complainant and executed Ex.P5-promissory note agreeing to repay the same with interest @ 24% per annum, and to discharge the said debt, he issued a cheque bearing No.107489, dated 31.05.2000 for Rs.30,000/-. When the said cheque was presented for collection, it was returned with endorsement 'insufficient funds' under Ex.P7-cheque return memo dated 03.06.2000. After issuing the statutory notice, as the petitioner-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.

15. To substantiate its case, the respondent-complainant examined its Managing Partner as P.W.1 and got marked Ex.P1-attested copy of registration of firm; Ex.P2-authorization; Ex.P3-attested copy of fresh partnership deed dated 25.7.2002; Ex.P4-attested copy of money lending license; Ex.P5-promissory note dated 08.10.1999; Ex.P6-cheque; Ex.P7-cheque return memo; Ex.P8-office copy of legal notice; Ex.P9-postal receipt for RPAD; Ex.P10-postal acknowledgement; Ex.P11-attested copy of

partnership deed dated 1.3.1996; Ex.P12-certified copy of decree in O.S. No.5226 of 2002; Ex.P13-certified copy of loan account; Ex.P14-certified copy of cash book and Ex.P15-certified copy of partnership deed dated 18.12.2000. The accused did not enter into witness box or file any documents, to substantiate his defence.

16. As per the evidence on record, the complainant is a registered firm. On 08.10.1999, the accused borrowed a sum of Rs.30,000/- from the complainant for his necessities and executed Ex.P5-promissory note agreeing to repay the same with interest @ 24% per annum. Thereafter, the loan amount was not paid. The accused issued Ex.P6-cheque to discharge the loan amount taken by him from the complainant firm. When the cheque was presented for encashment, it was returned by the Bank by way of Ex.P7-memo wherein there is specific mention that the funds were insufficient in the account maintained by the accused to honour the amount covered by the cheque. Ex.P6-cheque pertains to the account maintained by the accused in the Bank. Ex.P8 is the office copy of legal notice got issued by the complainant which reveals the demand made by the complainant for the amount covered under the dishonoured cheque. 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. The evidence on record reveals that the complaint was filed within the period of limitation. Nothing has been elicited in his cross-examination to disbelieve version of P.W.1. His evidence remained unshaken.

17. 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. 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.

18. The requirements to punish the accused for the offence punishable under Section 138 of the NI Act are proved. There is ample evidence to substantiate the averments of the complaint. 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.

19. 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.

(Dr. Shameem Akther, J)

18.04.2018
DRK

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.379 of 2007

DRK

18.04.2018