

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.118 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 23.12.2005 in Criminal Appeal No.33 of 2005 on the file of the IV Additional Sessions Judge (Fast Track Court), Prakasam district at Ongole.

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.

The petitioner-accused borrowed a sum of Rs.27,500/- on 06.01.2003 from the respondent-complainant and executed a promissory note in his favour agreeing to repay the same with interest @ 24% per annum. On 06.06.2003, the petitioner-accused issued cheque bearing No.160394 for Rs.30,250/- drawn on State Bank of Hyderabad, Ongole towards part satisfaction of the said debt. But, when the said cheque was presented on 04.09.2003, it was returned on 15.09.2003 with endorsement 'account closed'. 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 before the II Additional Judicial Magistrate of First Class, Ongole.

4. 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.

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, 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 to 3 were examined and Exs.D1 to D4 were got marked.

7. The trial Court, vide judgment dated 08.04.2005, 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 compensation of Rs.30,250/- towards compensation to respondent-complainant. Challenging the said conviction and sentence, petitioner-accused preferred Criminal Appeal No.33 of 2003 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.

8. Learned counsel for the petitioner-accused would contend that the courts below wrongly convicted and

sentenced the petitioner-accused of the offence punishable under Section 138 of the NI Act; that the complainant as P.W.1 did not state that the accused executed Ex.P5-promissory note; that there is contradiction in the evidence of P.W.1; that the complainant filed the impugned proceedings before the trial Court at the instance of one G.Ranga Rao; that the accused has not issued the cheque in question, and that the said cheque belongs to said G.Ranga Rao; that the ingredients to constitute the offence punishable under Section 138 of the NI Act have not been established, 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 Ex.P1-cheque bearing No.160394 for Rs.30,250/- drawn on State Bank of Hyderabad, Ongole towards part satisfaction of the amount borrowed by him under Ex.P5-promissory note dated 06.01.2003, and when the said cheque was presented, it was returned under Ex.P2 with endorsement 'account closed'. After issuing Ex.P3-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.

12. To substantiate his case, the respondent-complainant examined himself as P.W.1, and Exs.A1 to A.5 were marked through him. The petitioner-accused examined himself as D.W.2, Bank Manager as D.W.1 and scribe of Ex.P5 as D.W.3, and Ex.D1-reply notice, Ex.D2-true copy of cheque book issuance register, Ex.D3-undertaking letter given by G.Ranga Rao and Ex.D4-certified copy of promissory note dated 16.12.2001, were marked on his behalf.

13. P.W.1 clearly and categorically deposed in his evidence about the petitioner-accused borrowing an amount of Rs.27,500/- from him on 06.01.2003 and executing Ex.P5-promissory note agreeing to repay the same with interest @ 24% per annum, and the petitioner-accused issuing Ex.P1-cheque dated 06.06.2003 for Rs.30,250/- towards discharge of the amount due under Ex.P5-promissory note, and thereafter, presenting the said cheque and returning of the cheque under Ex.P2-memo with endorsement 'account closed', and thereafter issuance of statutory notice under Ex.P3 demanding to pay the amount covered under the dishonoured cheque, and ultimately the circumstances resulting in filing of the complaint. Nothing has been elicited in his cross-examination to disbelieve his version. His version remained unshaken.

14. It is vehemently contended that the cheque in question belongs to one G.Ranga Rao, and the petitioner-accused has nothing to do with it. The contention of the petitioner-accused is that he does know the complainant and the said G.Ranga Rao is behind lodging the present

complaint. As per the evidence of D.W.1-Bank Manager, the cheque book shown to him on that day belongs to the accused and Ex.P1 is one cheque leaf from the said book. D.W.3 deposes that he did not scribe Ex.P1-cheque but he scribed Ex.P5-promissory note and the executor and attestors signed the said document.

15. From the evidence of D.W.3, it is established that Ex.P5-promissory note was scribed by him and the executor and attestors signed before him. The evidence on records reveals that petitioner-accused admitted his signature on Ex.P1. Ex.P1-cheque pertains to the account maintained by the petitioner-accused in the Bank. So, 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 respondent-complainant that the cheque in question was issued for discharge, in whole or in part, of any debt or other liability.

16. Though the petitioner-accused examined himself as D.W.1 and deposed about his defence, his interested testimony is not sufficient to rebut the presumptions available in favour of the respondent-complainant. Under these circumstances, it cannot be held that there is no legally enforceable debt or liability. Further, it cannot be held that the said G.Ranga Rao is instrumental in lodging the present complaint. Further, the said G.Ranga Rao is not examined on behalf of the petitioner-accused in this case. 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 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.

17. 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



(Dr. Shameem Akther, J)

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