

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.1679 of 2014

ORDER:

This Criminal Revision Case by the petitioner-accused under Sections 397 and 401 Cr.P.C. is directed against the judgment dated 11.08.2014 in Criminal Appeal No.272 of 2013 on the file of the V Additional Sessions Judge (Fast Track Court), Ranga Reddy District.

2. The respondent No.2-complainant filed a complaint against the petitioner-A.1 and another, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'NI Act'), alleging as follows.

Complainant is an NRI (U.S. citizen). A.1 is brother-in-law of A.2. A.2 was running DTDC courier service in Ongole, Prakasam district. Complainant and A.2 are childhood friends and distant relatives. On the instigation of A.2, the complainant invested huge sums in hotel business viz. M/s. Taste Hotels Private Limited, Ongole. In view of friendship, a share was given to A.2 with a power to operate bank account and to manage hotel business. Under the influence of A.2, the complainant invested huge amount to purchase landed property in rural and urban areas. He sent nearly Rs.5.00 crores to A.2 from time to time by various modes of transfer to his bank account. Taking advantage of his innocence and absence from country, A.2 purchased lands and properties in the name of A.1 and other family members and got unjust enrichment. Upon intervention of elders, A.1, A.2 and other relatives came forward to settle the account and also agreed to transfer the lands in favour of the complainant, and in

pursuance of the same, A.2 executed promissory notes in his favour. Apart from that, A.1, A.2 and other family members issued cheques in his favour towards discharge of their respective liabilities. One of the cheques bearing No.366054, dated 15.02.2010 for Rs.30.00 lakhs issued by A.1 was presented by him. But, the same was returned by the Banker with endorsement 'insufficient funds'. After complying the procedure contemplated under Section 138 of the NI Act, as the accused did not repay the amount covered under the cheque dishonoured, the present complaint was lodged before the XIII Metropolitan Magistrate, Cyberabad at L.B. Nagar, Hyderabad.

3. The learned Magistrate took cognizance of the case for the offence punishable under Section 138 of the NI Act against A.1 and A.2. The proceedings against A.2 were quashed by this Court vide order dated 22.03.2011 in Criminal Petition No.300 of 2011.

4. When A.1 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 P.Ws.1 and 2 and got marked Exs.P1 to P23 on his behalf.

6. After closure of the prosecution evidence, A.1 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 evidence or documentary evidence was adduced on behalf of the defence.

7. The trial Court after considering the evidence on record, found the accused guilty of the offence punishable

under Section 138 of the NI Act, accordingly convicted him and sentenced to undergo simple imprisonment for a period of one year and to pay fine of Rs.3,000/- in default to suffer simple imprisonment for a further period of two months, and to pay compensation of Rs.30,00,000/-. Challenging the said conviction and sentence, A.1 preferred Criminal Appeal No.272 of 2013 on the file of the V Additional Sessions Judge (Fast Track Court), Ranga Reddy District. The appellate Court, vide the impugned judgment, partly allowed the appeal confirming the conviction and the sentence of imprisonment imposed, and compensation granted, by the trial Court but setting aside the fine amount imposed. Challenging the same, the present revision came to be filed by the accused.

8. Heard the learned counsel for the petitioner-A.1, the respondent No.2 appearing in party-in-person and perused the record.

9. Learned counsel for the petitioner-A.1 would contend that the courts below wrongly convicted and sentenced the petitioner-A.1 for the offence punishable under Section 138 of the NI Act; that the presumptions under Sections 118 and 139 of the NI Act are rebutted in the instant case; that there is no legally enforceable debt or liability; that the courts below did not consider the decisions relied on by the petitioner-A.1 in support of his case viz. in Rangappa v. Sri Mohan {2010 (4) Supreme 169}; Kamala S. v. Vidyadharan M.J. & another {2007 (2) Supreme 611}; Krishna Janardhan Bhatt v. Dattatreya G.Hegde {2008 (1) Supreme 306} & M/s. Kumar Exports v. M/s. Sharma Carpets {2009 (1) Supreme 231}, and wrongly imposed compensation of Rs.30.00 lakhs, and ultimately, prayed to allow the revision as prayed for.

10 On the other hand, the respondent No.2 appearing party-in-person would submit that both the courts below appreciated the evidence on record in right perspective and there is no miscarriage of justice; that findings recorded by the courts below are based on proper appreciation of the evidence on record, and there are no grounds interfere with the same, and ultimately, prayed to dismiss the revision.

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

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. The evidence on record reveals that respondent No.2-complainant is an NRI and A.1 is brother-in-law of A.2. A.2 was running DTDC courier service in Ongole. At the instigation of A.2, the complainant invested an amount of Rs.36.00 lakhs having obtained Rs.40.00 lakhs and Rs.70.00 lakhs by way of hand loans from friends and banks, etc., in hotel business. A share was given A.2 on account of his friendship and nominated him as Director with a power to operate bank accounts and manage the business under the name and style 'M/s. Taste Hotels Private Limited, Ongole'. The complainant sent Rs.5.00 crores to A.2 from time to time by various modes of transfer. After receipt of huge amount from the complainant, A.2, taking advantage of innocence and

friendship, purchased landed properties in the name of A.1 and his other family members and became enriched illegally. When the complainant asked for details of purchases made by A.2, he came to know that A.2 misappropriated the funds sent by him. A.1 also acquired property in his name from the amount sent by the complainant. A.2 purchased nearly Ac.377.00 guntas of land in his name and in the name of other close relatives with the funds of the complainant. A.1 and A.2 are small businessmen and they do not have money to make such huge investments. Upon intervention of elders, A.1, A.2 and their relatives came forward to settle his account and transfer the lands in his favour. In pursuance of the said agreement, A.2 executed promissory notes and A.1, A.2 and other family members issued cheques in favour of the complainant.

14. The complainant as P.W.1 reiterated the averments of the complaint in his examination-in-chief. Ex.P1 is the cheque issued by A.1. When it was presented, it was dishonoured under Ex.P2-cheque return memo. Ex.P3 is the office copy of statutory notice. Ex.P4 is the returned postal cover. Exs.P5 and P6 are certified copies of sale deeds. Exs.P8 to P23 are various e-mails. Nothing has been elicited in his cross-examination to disbelieve his version. His version remained unshaken.

15. The evidence on records reveals that A.1 admitted his signature on Ex.P1. Therefore, a presumption can safely be drawn in favour of the complainant with regard to passing of consideration. No oral or documentary evidence has been adduced on behalf of A.1 to rebut the same. Except putting some suggestions in cross-examination of P.W.1, nothing has been elicited to rebut the said presumption.

A.1 did not even choose to come to witness box. Under these circumstances, it cannot be held that there is no legally enforceable debt or liability. The trial Court had elaborately dealt with the submissions made on behalf of A.1 and examined the decisions relied on by him. Therefore, the presumptions under Sections 118 and 139 of the NI Act are available in favour of the complainant. The trial Court rightly found A.1 guilty of the offence punishable under Section 138 of the NI Act, and the same was rightly affirmed by the appellate Court.

16. As regards sentence, the appellate court rightly set aside the imposition of fine, as fine and compensation cannot be imposed simultaneously under Section 357 Cr.P.C. The findings of the Courts below are based on proper appreciation of evidence on record. There is no 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.

(Dr. Shameem Akther, J)

17.04.2018
DRK

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.1679 of 2014



DRK

17.04.2018