HON'BLE SRI JUSTICE P. KESHAVA RAO

CRL.R.C.M.P.No.1540 of 2014
AND
CRIMINAL REVISION CASE No.1020 of 2005

COMMON ORDER:

Heard the learned counsel for the petitioner and the 1st respondent.

The present revision case is filed assailing the judgment passed in Crl.A.No.358 of 2004 dated 07.06.2005 on the file of the IV Additional Metropolitan Sessions Judge, Hyderabad, confirming the judgment in C.C.No.747 of 2000 dated 03.12.2004 on the file of the XXIII Metropolitan Magistrate, Hyderabad, convicting the petitioner for the offence under Section 138 of the Negotiable Instruments Act (for short, "the Act").

The facts in brief are that the 1st respondent herein filed C.C.No.747 of 2000 against the petitioner for the offence under Section 138 of the Act. It is his case that the petitioner is well acquainted to him. Taking advantage of the said acquaintance, the petitioner took hand loan of Rs.3 lakhs from him for his urgent business and domestic requirements with a promise to repay the same in a short period. In spite of repeated requests and demands made by the 1st respondent, the petitioner has not paid any amount, but finally issued a cheque bearing No.232271 dated 21.03.2000 for Rs.3 lakhs drawn on Andhra Bank, Nuzivedu, Krishna District, in favour of the 1st respondent. On presentation, the said cheque was dishonoured with an endorsement "insufficient funds". After complying with the mandatory procedure as contemplated under the provisions of the Act, the 1st respondent filed the above complaint. After trial, the petitioner was convicted for the said offence and directed to undergo imprisonment for six months and to pay a fine of Rs.5,000/- by judgment dated 03.12.2004. Against the said judgment, the petitioner filed an appeal in Crl.A.No.358 of 2004 on the file of the IV Additional Metropolitan Sessions Judge, Hyderabad. After hearing, the said appeal was also dismissed confirming the judgment of the trial Court by judgment dated 07.06.2005. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner, during the course of hearing, submitted that the parties have settled the matter outside the Court and entered into a compromise. In that context, the 1st respondent filed Crl.R.C.M.P.No.1540 of 2014 seeking permission of the Court to receive the compromise petition and record the same in the interest of justice.

Though the 1st respondent filed the said petition by engaging a separate counsel, neither he nor the 1st respondent appeared before the Court. It is informed by both the counsel that the parties are not coming forward in spite of filing a petition. In these circumstances, this Court is not inclined to entertain the said petition.

Accordingly, Crl.R.C.M.P.No.1540 of 2014 is dismissed.

As far as the merits in the revision case are concerned, the petitioner has taken hand loan of Rs.3 lakhs from the 1st respondent for his urgent business and domestic requirements with a promise to repay the same in a short period. On repeated requests and demands, the petitioner issued the subject cheque for Rs.3 lakhs. On presentation, the said cheque was returned with an endorsement “insufficient funds”. After complying with the mandatory procedure relating to issuance of notice and etc., a complaint was filed. The petitioner examined himself as DW.1 and marked Exs.D1 and D2 i.e., certified copy of the plaint and written statement respectively.

Learned counsel for the petitioner submitted that the petitioner and his mother have availed a loan of Rs.3 lakhs in May, 1991 from one Shivaji and given five blank cheques to him. He also executed a binami mortgage deed in favour of the complainant i.e., the 1st respondent, as he was his relative. Therefore, there is no legally enforceable debt between the petitioner and the 1st respondent.

From the appreciation of the said facts, it is evident that the petitioner and his mother were the parties in the said suit, but in the case on hand, it is the specific case of the 1st respondent that the petitioner alone had borrowed Rs.3 lakhs towards hand loan for his business and domestic requirements. Though the petitioner has taken such a specific defence, he has not adduced any corroborative evidence by him to show that only towards the transaction in question, the mortgage deed was executed and as such he is not liable to pay any amount and there is no legally enforceable debt against him and he did not put any question to PW.1 in the cross-examination.

In the light of the presumption under Section 139 of the Act, once it is established that the cheque was issued, it is deemed that the said cheque was issued for discharge of the legally enforceable debt till the contract is disproved by the accused. In these circumstances, it is for the petitioner to rebut the said presumption. In the case on hand, the petitioner though put forward a specific defence, failed to discharge the burden imposed on him. From a further perusal, both the Courts below have appreciated the same and since the petitioner miserably failed to prove the rebuttal, convicted him.

Since the scope of revision under Sections 397 and 401 Cr.P.C., is very limited and unless and until the perversity or otherwise or the patent irregularity or illegality on the face of the order is made out, the revision cannot be maintained. Therefore, this Court is of the opinion that there are no merits in the revision case and the same is liable to be dismissed.

Accordingly, the criminal revision case is dismissed. Interim order, if any, stands vacated.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date: 10.12.2018.
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