HONOURABLE SRI JUSTICE P.KESHAVA RAO

CRIMINLA REVISION CASE NO. 10 of 2011

O R D E R:

Heard the learned counsel appearing for the petitioner.

The case of the petitioner is that the first respondent herein filed a complaint vide C.C.No.371 of 2008 for the offence under Section 138 of the Negotiable Instruments Act (for short 'the Act') against him. It is his case that on his request, he advanced a sum of Rs.2 lakhs towards hand loan on 21.05.2007 and in lieu thereof, he executed a promissory note in his favour. Subsequently, on demand, the petitioner issued a cheque i.e. Ex.P-2 for Rs.2 lakhs. When the said cheque was presented for realization, it was dishonored with an endorsement 'account closed' under Ex.P-3 and the same was informed to him under Ex.P-4. The first respondent got issued a legal notice under Ex.P-5 to the petitioner. Though the said notice was received, the petitioner neither paid the amount nor gave reply resulting filing the complaint. The first respondent to prove his case, examined himself as PW-1 and examined one B. Prabhaker who was present at the time of loan transaction as PW-2 and marked Exs:P-1 to P-7. The petitioner did not examine any witness on his behalf, but Ex.D-1 was marked. The learned XVI Additional Judge-cum-XX Addl. Chief Metropolitan Magistrate, Hyderabad, after hearing both parties and appreciation of the evidence brought on record, convicted the petitioner and sentenced her to undergo rigorous imprisonment for six months and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for three months vide judgment dated 17.06.2010 passed in C.C.No.371 of 2008. Aggrieved by the said judgment, the petitioner filed Crl.A.No.204 of 2010 on the file of the IV Additional Metropolitan Sessions Judge, Hyderabad. The learned Sessions Judge after hearing, was pleased to dismiss the appeal, confirming the judgment of the Court below vide judgment dated 12.10.2010, against which the present revision is filed.

The learned counsel appearing for the petitioner contended that the judgments of both the Courts below are contrary to law, and against the material on record. The first respondent failed to prove the payment of amount under the cheque and as such there is no legally enforceable debt. In the absence of any evidence showing the payment of amount, the presumption under Section 139 of the Act has been drawn which is contrary to the settled proposition of law.

Having heard the learned counsel for the petitioner and from the perusal of the material on record, it is the specific case of the first respondent that on the request of the petitioner, he advanced a sum of Rs.2 lakhs as hand loan. Towards the said legally enforceable debt, the petitioner executed a promissory note and the subject cheque i.e. Exs:P-1 and P-2 respectively in his favour. When Ex.P-2 cheque was presented for collection, the same came to be dishonoured with an endorsement 'account closed'. PW-1 in his chief examination categorically stated that due to close acquaintance with him, the petitioner approached him to lend a sum of Rs.2 lahs. When the said amount was paid to the petitioner on 21.05.2007, PW-2 was present. In spite of issuance of legal notice and though the notice is served, the petitioner failed to pay the amount. In the cross examination of PW-1, it is brought on record that at the relevant point of time when the subject amount was advanced, PW-1 sold a plot and received a sale consideration more than Rs.6 lakhs. PW-2 deposed that he is a resident of the same locality and resides nearby the house of the first respondent. He is acquainted with the petitioner as well as the first respondent. On 21.05.2007 in his presence, the petitioner borrowed a sum of Rs.2 lakhs towards hand loan from the first respondent and the petitioner executed promissory note in favour of the first respondent, on which PW-2 signed as witness. In the cross examination, he also stated that when he went to the house of the first respondent, the petitioner and his friend were present in the house of the first respondent. Though PW-2 was cross examined, nothing has been elicited to discredit his testimony. As far as the evidence of PWs.1 and 2 is concerned, there is no discrepancy and as far as lending of the amount and execution of the promissory note and issuance of the cheque are concerned, the evidence is consistent and corroborated in all material aspects. When once the first respondent establish the payment of money towards hand loan and issuance of cheque towards the said debt, the presumption under Section 139 of the Act is automatic. Now, it is for the petitioner to prove that no amount has been advanced and the subject cheque has not been issued by him. Therefore, the burden is on the petitioner to prove the same to probabalise the non-existence of consideration by preponderance of probabilities.

Though the presumption under Section 118 and 139 of the Act is rebuttal, by way of preponderance of probabilities either through direct evidence or through the material brought on record, the petitioner failed to produce any evidence to rebut the said presumption. Mere denial of existence of debt is not sufficient to rebut the presumption. Further, the petitioner miserably failed to explain the circumstances under which Ex.P-2 was issued to the first respondent. That apart, there is no evidence as to how the promissory note (Ex.P-1) and the subject cheque (Ex.P2) went into the custody of the first respondent. When once the advancement of the amount and the issuance of Exs:P-1 and P-2, are not proved, this Court is of the opinion that the petitioner miserably failed to rebut the presumption as drawn under Sections 118 and 139 of the Act. In these circumstances, 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.

Miscellaneous petitions, pending if any, shall stand closed.

P.KESHAVA RAO,J

Date:10.10.2018
ccm

THE HONOURNABLE SRI JUSTICE P.KESHAVA RAO

CRIMINLA REVISION CASE NO. 10 of 2011

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