HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.978 of 2017

ORDER:

Heard the learned counsel for the petitioner as well as the respondents.

Questioning the judgment in Crl.A.No.55 of 2015 dated 17.11.2016 on the file of the Court of the Principal Sessions Judge, Karimnagar, confirming the judgment in C.C.No.277 of 2012 dated 07.04.2015, on the file of the Special Judicial Magistrate of First Class for Excise Cases at Karimnagar, the present criminal revision case is filed.

The petitioner herein filed a complaint against the 2nd respondent for the offence under Section 138 of the Negotiable Instruments Act (for short, "the Act"). The case of the petitioner is that the 2nd respondent having acquaintance with him obtained hand loan of Rs.9 lakhs from him and executed a promissory note on 03.05.2006 agreeing to repay the same with interest @ 2% per annum. When the petitioner insisted for repayment, the 2nd respondent on 20.03.2009 issued a cheque bearing No.120241 dated 20.03.2009 for a sum of Rs.9 lakhs in favour of the petitioner towards discharge of the legally enforceable debt. When the said cheque was presented for realization, the same was returned with an endorsement "account closed". Thereafter, the petitioner got issued a legal notice dated 07.04.2009 and after expiry of the statutory period enabling the 2nd respondent to pay the cheque amount, filed a complaint.

On behalf of the petitioner, he himself was examined as PW.1 and got marked Exs.P1 to P6. The 2nd respondent examined one U. Ekanadham as DW.1 and got marked Ex.D1 on his behalf.

After full-fledged trial, the Court below by judgment dated 07.04.2015 found that the 2nd respondent is not guilty for the offence punishable under Section 138 of the Act and acquitted him. Aggrieved by the said judgment, the petitioner filed an appeal vide Crl.A.No.55 of 2015 on the file of the Principal Sessions Judge, Karimnagar. The lower appellate Court, after hearing, was pleased to dismiss the appeal by judgment dated 17.11.2016, confirming the judgment of the trial Court. Aggrieved by the said judgment, the present revision case is filed.

Learned counsel appearing for the petitioner would contend that both the Courts below committed an irregularity in acquitting the 2nd respondent against the evidence on record and contrary to law. Both the Courts below erred in holding that by examining DW.1, the 2nd respondent rebutted the presumption raised under Section 138 of the Act, but failed to appreciate that the presumption has to be rebutted by proof and not by an explanation. The 2nd respondent never disputed his signatures on Ex.P1 (cheque) or Ex.P6 (promissory note) and therefore both the Courts ought not to have shifted the burden on to the petitioner to prove existence of legally enforceable debt. Once issuance of cheque is admitted, the presumption under Section 139 of the Act is automatic and it is for the accused to prove his defence by way of rebuttal. In the case on hand the 2nd respondent failed to rebut the presumption by any proof. The defence raised by the 2nd respondent is not a probable one more particularly the 2nd respondent miserably failed to establish as to the cheque issued in favour of one G. Anjaiah Goud of Nikhil Balaji Finance came into the custody of the petitioner. Therefore, he sought for allowing the revision.

Per contra, the counsel appearing for the 2nd respondent supported the judgments of both the Courts below.

After hearing both the counsel and having regard to the facts of the case, the undisputed facts are that Ex.P1, cheque, issued by the 2nd respondent was dishonoured with an endorsement "account closed" and after complying with the mandatory procedure of issuing notices etc., as contemplated under the provisions of the Act, the petitioner filed the complaint. The defence of the 2nd respondent is that the petitioner failed to depose and prove the date of transaction on which he alleged to have borrowed the amount from him. The petitioner had no acquaintance with the 2nd respondent but he got acquaintance only through one G. Anjaiah Goud. The petitioner also admitted that he advanced huge amounts to the 2nd respondent. It is curious to note that when the petitioner has no acquaintance with the 2nd respondent, the question of advancing huge amounts to him throws any amount of doubt about the theory advanced by the petitioner. The further case of the petitioner is that the 2nd respondent executed Ex.P6 i.e., promissory note in the presence of one G.Anjaiah Goud and one U. Ekanadham, who stood as a surety for the loan transaction between himself and the 2nd respondent and he also signed as a surety. However, the petitioner has not mentioned that the said U. Ekanadham was present and stood as a surety in the legal notice. On the contrary, the said U. Ekanadham has been examined by the 2nd respondent as DW.1. If DW.1 was not present at the time of execution of Ex.P6, how his signature is appearing on the promissory note is not explained by the petitioner. This point raises a serious doubt about execution of Ex.P6 by the 2nd respondent in connection with the loan amount of Rs.9 lakhs. Admittedly, the petitioner has not examined any of the attestors to prove his case, which is fatal in nature. The other specific defence taken by the 2nd respondent is that except the signatures on Exs.P1 and P6, their contents are not written by him. In view of this specific defence, it is for the petitioner to prove that both the documents were filled and executed by the 2nd respondent. However, the petitioner in his evidence deposed that he does not know the scribe of Exs.P1 and P6. If really the 2nd respondent had executed the said instruments, he would have deposed that the 2nd respondent is the scribe of the said instruments. Even if the case of the petitioner that the 2nd respondent obtained loan of Rs.9 lakhs from him promising to repay the same with interest @ 2% per annum is accepted, when the cheque was alleged to have issued on 20.03.2009 i.e., approximately after 35 months, the amount will be Rs.9 lakhs and interest accrued thereon is Rs.6,30,000/-. Even on this count also there is inconsistency. On these aspects, the petitioner miserably failed to explain that he has lent Rs.9 lakhs to the 2nd respondent pursuant to which Exs.P1 and P6 are executed in his favour.

On the other hand, the defence of the 2nd respondent is that he obtained finance to the extent of Rs.50,000/- from Nikhil Balaji Finance maintained by Sri G. Anjaiah Goud and he took blank signed promissory note and cheque towards surety. One U. Ekanadham stood as surety for it. Though, he repaid the entire amount with interest, disputes arose between him and Sri G. Anjaiah Goud, as such, the blank documents are not returned to him. The said G. Anjaiah Goud misused the said documents and got filed the present complaint through the petitioner.

In order to prove his defence, the 2nd respondent examined U. Ekanadham as DW.1 on his behalf. In his evidence, DW.1 deposed that the 2nd respondent borrowed Rs.50,000/- from Nikhil Balaji Finance maintained by Sri G.Anjaiah and he stood as surety for it. In the cross examination of DW.1, nothing is elicited to discredit his evidence more particularly borrowing of Rs.50,000/- from Nikhil Balaji Finance by the 2nd respondent. The standard of proof in case of defence is only preponderance of probability but not as proof beyond reasonable doubt in case of prosecution.

In the case on hand, the petitioner failed to establish that Exs.P1 and P6 are issued pursuant to the loan advanced by him to the 2nd respondent, but, on the other hand, DW.1 clearly deposed that he has signed on a blank cheque and a promissory note when the 2nd respondent borrowed Rs.50,000/- from Nikhil Balaji Finance maintained by Sri G.Anjaiah Goud. On these aspects, both the Courts below have categorically held that the petitioner miserably failed to establish his case. But, on the other hand, the defence taken by the 2nd respondent appears to be probable and he has explained as to execution of Exs.P1 and P6.

It is settled law that the scope of revision is very limited more particularly when both the Courts below have concurrently held against the petitioner by acquitting him. In revision, the acquittal cannot be converted into conviction when admittedly there is no illegality or irregularity in the orders passed by both the Courts below.

In these circumstances, this Court holds that there are no merits in the criminal revision case and the same is liable to be dismissed.

Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date: 11.06.2018.
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