THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2688 of 2017

ORDER:

The revision petitioner is the accused in C.C.No.536 of 2013 on the file of the Special Judicial First Class Magistrate (Prohibition & Excise), Visakhapatnam. She faced trial for the offences punishable under Section 138 of the Negotiable Instruments Act (for short, 'the Act') on the complaint of respondent No.2 herein. After a regular trial, by the judgment dated 18.12.2014, she was convicted under Section 255 (2) of the Code of Criminal Procedure, 1973 (for short, 'the Code') and sentenced to suffer Simple Imprisonment for a period of six months and to pay a fine of Rs.2,000/- in default to suffer Simple Imprisonment for a period of one month.

2. Aggrieved over the same, when the accused preferred Criminal Appeal No.286 of 2014 on the file of Metropolitan Sessions Judge-cum-I Additional District and Sessions Judge, Visakhapatnam, the learned Sessions Judge, by his judgment dated 10.08.2017, while confirming the conviction recorded by the learned Magistrate, reduced the sentence to Simple Imprisonment for a period of three days, besides maintaining the fine amount imposed by the trial Court. Questioning the same, the accused preferred the present Criminal Revision Case under Sections 397 and 401 of the Code.

3. Heard Sri M. Viswanadham, learned counsel for the revision petitioner.

4. The present revision case is disposed of at the admission stage, as this Court is of the opinion that there is no necessity to issue notice to respondent No.2 - complainant.

5. In case respondent No.2 - complainant is aggrieved over the judgment, always remedies are available by preferring Criminal Appeal.

6. As many as four points have been agitated by the learned counsel for the revision petitioner. The first point is that no notice was served on the revision petitioner and, thus, the mandatory requirement is not fulfilled. Second, that respondent No.2 has no capacity to lend the amount and no evidence was let in therefor. Third, there was no enforceable debt or liability, which the courts below have not properly appreciated. The last submission is that there was no acquaintance at all between the revision petitioner and the complainant.

7. The learned counsel, in order to substantiate the aforesaid points, would submit that Note 8 to Section 118 of the Act, form a text book. It is according to him that in a case referred to therein, the Court observed that even the date of advancement of loan was not mentioned and, therefore, he submits that no presumption under Section 118 of the Act, he would submit that no presumption can be drawn in the present case, since the source of income or means to lend income is not disclosed in the case on hand. It is clear from the case referred to in the note that there was some suspicion, because date of

advancement of loan was not even mentioned in the complaint. It is not so in the present case. The date of borrowal is specifically mentioned in the complaint which is referred to by the Courts below in the respective judgments. Concerning the requirements of Section 138 of the Act, though, it is contended that notice was not served as already mentioned, in fact, Ex.P-5 clearly shows that it is postal acknowledgment relating to the revision petitioner dated 18.10.2011, through which the legal notice dated 14.10.2011 was served. Therefore, it cannot be said that the mandatory requirement is not complied with.

8. In fact, concurrent findings have been staring at the revision petitioner and, therefore, she is obligated to convince this Court that the findings recorded by the courts below are patently illegal warranting interference.

9. Leaving the judgment passed by the trial Court, when the reasoning adopted and the findings recorded by the lower appellate Court are seen, it is to be observed that absolutely no legal infirmity at all crept in the judgment passed by the lower appellate Court. Similar submissions have been made before the lower appellate Court by the revision petitioner contending that the revision petitioner did not execute any promissory note nor did she issue any cheque towards discharge of any legally enforceable debt; that no notice was served on the revision petitioner personally, that the cheque is of rank forgery, that no person would lend a huge amount of Rs.3,00,000/-

without obtaining any security and without enquiry into the financial status; that there was no acquaintance between the revision petitioner and the complainant; that any payment more than Rs.20,000/- shall be made by way of cheque or demand draft, but not by way of cash and that there were contradictions in the evidence of PW.1. These were answered by the lower appellate Court in paragraph '9' and, in fact, the lower appellate Court has referred to the ruling in **K.N. Beena v. V. Muniyappan and another**[1] for the proposition that the burden of proof that the cheque had not been issued for any debt or liability is on the accused. The lower appellate Court, in paragraph '13', appreciated the evidence on record and the evidence of PW.2, who was the Bank Manager through whom the cheque return memo, dated 07.10.2011, covered by Ex.P3 issued by the Bank was proved, was considered and it was not elicited from PW.2 that the signature made on Ex.P2 does not belong to the revision petitioner. A probability was derived by the lower appellate Court that the revision petitioner has not filed any complaint complaining that her signature was forged and cheque under Ex.P2 was fabricated nor she lost Ex.P2 at any time prior to legal notice, dated 14.10.2011, thereby, the lower appellate Court observed that when there is no explanation on behalf of the revision petitioner as to how the leaf of the cheque came into possession of the complainant, the invariable inference is that the cheque was issued by the revision petitioner and, thereby, raised the

[1] 2001 (2) ALD (Crl.) 824 (SC)

presumption under Section 139 of the Act. The lower appellate Court referred to the evidence of the revision petitioner examined as DW.1 and her admission. It also observed that there is nothing in the evidence of PW.2 to rebut the presumption nor to substantiate the stand taken by DW.1. Thus, the reasons assigned and the findings recorded by the lower appellate Court cannot be faulted. Absolutely there is nothing brought out in the evidence of PWs.1 and 2 to substantiate the stand of the revision petitioner that the promissory note and cheque were forged documents and that there was no acquaintance between the revision petitioner and the complainant. When once the plea of forgery is agitated, the burden of proof lies on the revision petitioner. In this direction, there is absolutely nothing on record. Therefore, there is no merit in the present revision case.

10. Accordingly, the present Criminal Revision Case is dismissed confirming the conviction recorded and the sentence of imprisonment, as modified by the lower appellate Court, and also the fine imposed by the trial Court and affirmed by the lower appellate Court.

Miscellaneous Petitions, if any, pending in the present revision case, stand closed.

A. SHANKAR NARAYANA, J

02.01.2018
v v/ p v