

Criminal Revision Case No.146 of 2014

ORDER:

The petitioner is the accused working as Typist-cum-Stenographer in the office of A.P.State Seeds Certificates Agency, (Quality Control), opposite to A.P.Haka Bhavan, Hyderabad. The 2nd respondent is the complainant against the petitioner in C.C.No.370 of 2010 on the file of the I Addl.Chief Metropolitan Magistrate, later transferred to II Spl.Magistrate and numbered as C.C.No.71 of 2011, which was taken cognizance for the offence u/ sec.138 of the Negotiable Instruments Act(for short, 'the NI Act') against the petitioner/ accused for the cheque stated to have been issued by him in favour of the complainant when presented returned dishonoured and he was convicted by the trial Court by judgment dt.05.03.2012 to undergo Rigorous Imprisonment(RI) for one year and to pay a fine of Rs.10,000/- with default sentence of Simple Imprisonment (SI) for three months which is from the evidence of complainant as P.W.1 and with reference to Exs.P.1 to P.16 with no independent evidence of the accused which documents include the two cheques bearing Nos. 452210 and 452209 respectively of February, 2010 presented that were returned dishonoured and from the legal notice dt.17.03.2010 issued covered by postal receipt and certificate of posting that was acknowledged of registered cover though two more notices were returned and it is in respect of the two promissory notes executed by the accused for discharge of which the alleged cheques were issued and there are two Lok Adalath Awards No.70 and 72 of 2011, Miryalaguda in respect of other cases and when the accused impugned the same in CrI.A.No.235 of 2012 before the IV Addl.Metropolitan Sessions Judge, Hyderabad, the same was ended in dismissal confirming the trial Court's conviction judgment and impugning the same, the present revision is filed.

2. Heard the learned counsel for the petitioner and the 2nd respondent-complainant appeared as party in person and also the learned Public Prosecutor representing for the 1st respondent-the State and perused the material on record.

3. The legal notice even served there was no reply by the accused after dishonour of the cheque much less payment of the amount and the non-giving of reply as held in para-15 of the expression of the Apex Court Constitution Bench in Rangappa Vs. Mohan¹, leads to adverse inference and there is even from the evidence of P.W.1-defacto-complainant with reference to the documents in his cross-examination nothing elicited worth to disprove the case and in the cross-examination as discussed by the trial Court what P.W.1 deposed is he was doing plastic business in rented accommodation of Rs.2000/- per month and he has no savings in his business and his annual turn over is 5 lakhs and he requires maintenance of Rs.4,000/- per month and his monthly income is 5,000/- to 6,000/- and the petitioner contended that the defacto-complainant has no capacity to lend such huge amount of Rs.10lakhs and thereby his version cannot be believed.

4. The P.W.1 in fact deposed that the accused is his childhood friend and from his dire need when resorted him, the complainant lent the amount having borrowed from S.Yadagiri,V.Srinivasulu and C.Surya Prakash respectively and among those persons P.Ws.2 and 3 also deposed the same in substantiating the version of the complainant. Thereby whenever he borrowed the amount and lent to the accused, the case of the P.W.1 is clearly established, leave apart the P.W.1 deposed about the suits filed against the accused by the P.Ws.2 and 3 for recovery of money in O.S.Nos.160 and 161 of 2011 on the file of the learned Senior Civil Judge, Mryalaguda which were settled in Lok Adalath by Award Nos.70 and 72 of

¹ (2010) 11 SCC 441

2011 and what the accused suggested further of he did with P.W.1 real estate business from 2007 to 2010 with no basis that too he being a public servant and the same is confirmed by the lower appellate Court for the accused did not discharge the burden of him having admitted about the cheque routed from his account with his signature under reverse onus clause as held in Rangappa supra.

5. In fact, the complainant-party in person submits that it is not his endeavour to see that the accused must go to jail but for to recover the amount as he suffered decree for the amount borrowed from others as proved in the trial Court. In fact, the Apex Court *Somnath Sarkar Vs. Utpal Basu Mallik*² observed that in cheque bounce cases as per the settled law the endeavour is to get recovery rather than punishing the accused for somewhat different to other conventional offences with punitive measures as also held earlier in this Court by the 3JB expression of the Apex Court in *Damodar S. Prabhu Vs. Syed Babalal*³.

6. Having regard to the above, by considering the scope of law including the cheques issued and their dishonour is subsequent to the amendment to Section 143 of the N.I. Act, came into force which says of unlimited fine can be imposed with or without imprisonment to a maximum of one year and trial jointly to be conducted summarily.

7. In view of the above, the one year Rigorous Imprisonment with fine of Rs. 10,000/- imposed by the trial Court and confirmed by the lower appellate Court is modified to a fine of Rs. 10,10,000/- with imprisonment till rising of the day by giving set off of the period undergone if any with default sentence in the event of non-payment, to six months Simple Imprisonment for the lower Court to secure the presence of the revision petitioner/accused to undergo if not undergone, at least one day

² (2014 (1) ALT CrI. 145

³ 2010 5 SCC 663

imprisonment till rising of the day and to levy fine amount u/ sec.421 CrPC and pay out of it after adjustment of Rs.10,000/- fine, if not already paid to the State out of the total amount of Rs.10,10,000/- and the Rs.10lakhs as compensation to the complainant.

8. Having regard to the above and in the above extent, the Criminal Revision Case is partly allowed. Consequently, miscellaneous petitions, pending if any, shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

Date:22.02.2019
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