

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2790 of 2018

ORDER :

At request of both sides, the main revision itself is taken up for hearing.

2. The appellant is A.1 and respondent No.2 is A.2 in C.C.No.80 of 2016 on the file of the learned II Special Magistrate at Rajendranagar, out come of the private complaint of respondent No.1 for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') taken cognizance and from securing his presence and denial of the offence on plea of not guilty, put to trial and after trial A.1 was convicted to undergo rigorous imprisonment for one year and to pay the cheque amount of Rs.5,00,000/- within two months from the date of trial Court's judgment, dated 26.10.2016, with default sentence of six months and impugning the correctness of the same, the revision petitioner/A.1 as sole appellant unsuccessfully maintained Crl.A.No.970 of 2016, that was dismissed by confirmation on 16.05.2018 and impugning the same, present revision is filed. Undisputedly, it is the concurrent findings of the Courts below.

3. The contentions in the grounds of revision are that the Courts below failed to see that Ex.P.2 surety bond contain the petitioner undertook as guarantor for the amount borrowed by A.2 of Rs.5,00,000/- from the complainant, that was agreed to pay by 31.01.2015 and subsequently A.2 paid the original cheque amount to the complainant, that was abused and misused by filing the cheque

case without return as if the amount due under the cheque even there is no legally enforceable debt or other liability because of the discharge supra, leave apart it was only a blank cheque obtained as guarantee at the initial stage referring to Ex.P.2 and thereby the concurrent findings of the Courts below are perverse and unsustainable and liable to be set aside and A.1 be acquitted by allowing the revision.

4. Learned counsel for the complainant in contra to the above oral contentions and from the grounds of revision raised by the learned counsel for the revision petitioner/A.1 submits that the concurrent findings of the Courts below supported by reasons that too of the trial Court fresh in mind of facts having conducted trial and for this Court while sitting in the revision, there is no illegality or impropriety to interfere within the limited scope and liable to be dismissed the revision.

5. Heard and perused the material on record.

6. Even from the revision contentions, leave about the concurrent findings went against the revision petitioner on factual foundation, the signature on the cheque is admitted and it was given at the time of execution of the so-called Ex.P.2-guarantee as guarantor to A.2 in the transaction. Once a cheque is given that too even from the contentions allegedly blank, it is an authorization to fill the inchoate instrument as contemplated by Section 20 of the Act, leave about in the absence of such proof all the presumptions under Section 118 of

the Act apply to say there is a legally enforceable debt under Section 139 of the Act also from the Constitution Bench expression of the Apex Court in **Rangappa v. Mohan**¹ for accused could not show from reading of the judgment, the reverse onus clause lies on him with the said defence having admitted the signature and rooting of the cheque from his account for the amount due under the transaction covered by Ex.P.2. Having regard to the above, so far as finding of guilt concerned, for this Court while sitting in revision, there is nothing to interfere.

7. However, that is not the end of the matter more particularly from the amendment to Negotiable Instruments Act incorporating Section 143 where under with *non-obstante* clause of what is mentioned in Section 138 of the Act liability of double the cheque amount with or without imprisonment. Leave about the fact that there is no *non-obstante* clause to Section 138 of the Act from the expression of the Apex Court in **Pankajbhai Nagjibhai Patel v. The State of Gujarat and another**² of Section 138 of the Act will not prevail over Section 29 Cr.P.C. of if at all fine to be imposed, shall not exceed what is provided therein that is amended Cr.P.C. in 2005 of Rs.5,000/- to Rs.10,000/- though no bar for compensation above the limit, however under Section 357 Cr.P.C., that too that arises after substantial sentence only, without that difficulty by virtue of Section 138 of the Act, the Court, by conducting a summary trial of the

¹ AIR 2010 SC 1898

² AIR 2001 SC 567

offence, can impose fine unlimited though the sentence of imprisonment cannot exceed one year rather two years provided in under Section 138 of the Act as per Section 143 of the Act. In fact, that is the spirit of law though not in so many words laid down by the Apex Court in **Somnath Sarka v. Utpal Basu Mallick**³ holding that once it is the endeavour in such cases of the complainant to recover the amount and not the endeavour of the complainant of accused shall go to jail, for something different to other conventional offences, Court shall not ignore the spirit of the provision with reference to the above civil liability made with criminal liability to give sanctity to the commercial transactions, taking consideration of these facts and submission of the learned counsel for the revision petitioner of the endeavour is only to recover the cheque amount rather than seeing that accused shall go to jail, thereby the sentence of one year imprisonment is modified to till raising of day by giving set off of the period undergone, if any, under Section 428 Cr.P.C. and by enhancing the compensation awarded of the cheque amount of Rs.5,00,000/- as fine with such modification of Rs.6,00,000/-, out of which, Rs.25,000/- goes to the State and remaining Rs.5,75,000/- payable to the complainant by granting two months time from the date of receipt of the judgment in this revision so to pay, with default sentence of three months simple imprisonment. It is made clear that within the time fixed above, if A.1 failed to pay in whole or any part of it, the complainant can enforce for its recovery under Section 421 Cr.P.C.

³ 2014 (1) ALT Crl. 145

8. With the above directions, the revision is disposed of.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

3rd April 2019

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