

THE HONOURABLE SRI JUSTICE K.SURENDER**Criminal Revision Case No.526 of 2004****JUDGMENT:**

1. Questioning the correctness of the conviction recorded by both the Courts below i.e., judgment in CC No.309 of 2002 dated 10.09.2003 passed by the Judicial Magistrate of First Class, Shadnagar, which was confirmed by the judgment in Criminal Appeal No.124 of 2003, dated 29.01.2004 passed by the Additional Sessions Judge, Mahabubnagar, the present Revision is filed by the petitioner.

2. Briefly, the facts of the case are that complainant represented by father had entered into an agreement titled as "Assignment of Benefit of Creditor" marked as Ex.P1, under which two cheques Exs.P2 and P3 were issued. The said cheques were issued towards the outstanding and according to agreement, if the amount was paid in cash, the said cheques would be returned. The said agreement was dated 10.03.2002 and the said cheques are dated 10.06.2002 and 10.07.2002 for Rs.1,70,000/- and Rs.1,36,000/- respectively. When the said cheques were presented for clearance, they were returned unpaid for the reason of 'payment stopped by

the drawer'. Aggrieved by the non-payment of the amount covered by the cheques, complaint was filed.

3. Learned Magistrate by judgment dated 10.09.2003 in CC No.309 of 2002, found the petitioner guilty for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of one year and further an amount of Rs.3,06,000/- was directed to be paid with simple interest at the rate of 6% per annum under Section 357 of Cr.P.C.

4. The said conviction was questioned before the learned Sessions Court in Criminal Appeal No.124 of 2003. The learned Sessions Judge confirmed the judgment of the learned Magistrate vide judgment dated 29.01.2004.

5. As seen from the proceeding sheet, learned counsel failed to appear, for which reason, this Court directed to appoint legal aid counsel. The legal aid counsel argued that the prosecution itself is bad in law for the reason of instituting complaint in the name of a minor, as such there can be no evidentiary value. The said beneficiary was not examined and the father was only examined. Examining GPA

holder without the principal being examined, the prosecution is bad.

As seen from the findings of the learned Magistrate, the Magistrate has appreciated the agreement in between the complainant and the accused and also found that there was a legally enforceable debt. Thereafter found that there was valid service of notice. For the said reasons, the conviction was recorded by the learned Magistrate.

6. On appeal, learned Sessions Judge concluded that the findings of the learned Magistrate cannot be interfered with as they are based on record.

7. This court under revision cannot embark upon re-appreciating evidence. The findings of the courts below cannot be found fault with for the reason of there being sufficient documentary evidence, which was based on record to substantiate that there is an outstanding which had to be paid by the petitioner. However, the case is of the year 2002 and the legal aid counsel submits that in spite of her best attempts, she could not contact the petitioner/accused. There is no reason to keep the case pending.

8. In the said circumstances, this Court deems fit appropriate to direct the petitioner/accused to pay consolidated amount of Rs.6,00,000/- to the complainant within a period of three months from the date of receipt of a copy of this order in the Magistrate Court. The learned Magistrate shall cause appearance of the petitioner and direct him to pay the amount of Rs.6.00 lakhs within a period of three months, failing which, petitioner shall undergo simple imprisonment for a period of six months.

9. With the aforesaid modification in sentence and finding of compensation, this Criminal Revision Case is ordered.

K.SURENDER, J

Date: 13.12.2022
kvs

THE HON'BLE SRI JUSTICE K.SURENDER

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