THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No. 265 OF 2015

ORDER:

This Criminal Revision Case is filed by the petitioner/accused aggrieved by the judgment of VI Metropolitan Sessions Judge, Secunderabad in Criminal Appeal No.346 of 2014 dated 05.02.2015 filed against the judgment in C.C.No.445 of 2013 (old C.C.No.1660 of 2012) dated 28.03.2014 on the file of XI Special Magistrate Court, Hyderabad.

2. The respondent No.1 is the complainant in a case under Section 138 of Negotiable Instruments Act (for short, 'NI Act').

3. The case of the complainant was that the complainant was a Private Limited Company by name, Meru Cab Services which would provide radio taxi services in Hyderabad and other metro cities. The accused was an advertising agency and he approached the complainant and requested them to provide for external banding/advertisement on taxies. The contract was for 6 months and later the duration was changed to 3 months. The accused agreed to pay Rs.2700/- per cab excluding service tax. For advertisement on 125 cabs per month, the amount was

fixed as Rs.3,37,500/- plus service tax. Total amount for three months would be Rs.10,12,500/- plus service tax of Rs.1,04,288/-, totaling to Rs.11,16,788/-. Three invoices were issued by the complainant for an amount of Rs.11,30,693/- and the accused paid Rs.1,80,000/- and had to pay Rs.9,50,693/-, hence, issued five cheques. The cheques were dishonoured on the ground 'Insufficient Funds' vide memo dated 13.09.2012. The complainant issued legal notice dated 18.09.2012 to the accused demanding repayment of the amount and it was served on the accused but he did not give any reply nor paid any amount. Hence, the complainant filed the private complaint.

4. The case was tried by the XI Special Magistrate Court, Hyderabad vide C.C.No.445 of 2013. The complainant got examined PWs.1 and 2 and got marked Exs.P1 to P23. The accused examined himself as DW1. No documents were marked on his behalf.

5. The trial court on considering the evidence on record found the accused guilty of the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for a period of six months and also to pay compensation of Rs.10,00,000/- to

the complainant within one month from the date of judgment on 28.03.2014.

6. Aggrieved by the said judgment of conviction and sentence recorded against him, the accused preferred an appeal. The appeal was heard by the Special Judge for Trial of offences under S.Cs & S.Ts (POA) Act – cum – VI Additional Metropolitan Sessions Judge, Secunderabad. V*ide* Criminal Appeal No.346 of 2014 dated 05.02.2015, the lower appellate court dismissed the appeal confirming the conviction and sentence recorded by the trial court.

7. Aggrieved further, the accused preferred this revision contending that the court below failed to see that there was no legally enforceable debt to be discharged by the petitioner, as the complainant abruptly terminated the contract without notice in three months as against the contractual period of six months causing huge financial loss to the petitioner, the alleged debt was not an established debt and moreover the correspondence was going on. The court below failed to appreciate that the respondent without proper licence from the concerned authorities had run the unauthorized business. Hence, the alleged liability of the petitioner was not an enforceable debt. The courts below grossly erred in

drawing the presumption under Section 139 of Negotiable Instrument Act. The courts below erred in appreciating the evidence in proper perspective and failed to see that there was a clear admission by PW-1 during his cross-examination that Exs.P4 to P8 were not issued after Ex.P23, as such, the courts ought to have believed that Exs.P4 to P8 were obtained from the petitioner as security at the time of inception of the contract. Therefore, the cheques were not issued in discharge of the alleged debt. Both the courts below failed to appreciate that the legal notice, Ex.P14 issued under Section 138 of NI Act was defective as it did not contain the details of cheques and hence, the complaint itself was not maintainable and prayed to allow the revision.

8. Heard the learned counsel for the revision petitioner/accused. There is no representation for respondent No.1/complainant. Considering that the matter is pertaining to the year 2015, this Court considered it fit to decide it on merits.

9. On perusal of the judgments of the courts below, both the courts had rightly appreciated the evidence on record. They had taken note of contention of the accused that the complainant abruptly terminated the contract without notice, but observed that the evidence of DW1 was

clear and clinching that there was no high handedness in termination of the contract on the part of the complainant and with mutual understanding, the period was reduced to three months. The lower appellate court also observed that the amounts mentioned in the cheques were tallying with the amounts mentioned by PW1 and the invoices marked under Exs.P20 to 22; the accused, who was examined as DW1, had not denied his liability but was only challenging the claim of the complainant on the ground that it was illegal as the complainant had not obtained permission from the GHMC for carrying advertisements on cabs, but not filed a single scrap of paper showing that the complainant need to obtain permission for advertising and not showed any provision which would mandate that such a violation was illegal; the accused failed to examine the municipal authorities or filed any document to substantiate his stand, rejected his contention. The trial court as well as the lower appellate court, considering the evidence of DW1 observed that the advertisement was carried by the complainant for three months and there was no obstruction by the municipal authorities for the said three months, for which period the advertisement was displayed, held that the accused could not agitate that the entire transaction was illegal and the debt was not legally enforceable.

10. Considering Ex.P23, a bunch of e-mails wherein the accused had acknowledged the transaction, the amounts due and was only seeking time to repay the amount but, never challenged the amount; the invoices marked under Exs.P20 to P22 and Ex.P19, purchase order and the evidence of DW1 and e-mails addressed by DW1 under Ex.P23 would show the transaction between the parties and explain the circumstances under which the cheques were issued, held that the case against the accused was proved under Section 138 of NI Act and the accused failed to rebut the presumption under Section 139 of NI Act by probable defence.

11. The contention of the accused that the cheques were issued as a security cannot be considered in view of the judgment of the Hon'ble Apex Court in '**Sripati Singh vs The State Of Jharkhand**[1]' wherein it was held that a cheque issued by way of security, if dishonoured also would attract the provisions of the Negotiable Instruments Act, 1881, if the same is issued in consequence of a legally

[1] 2021 SCC Online SC 1002

enforceable debt which was legally recoverable at the time of its presentation. The Hon'ble Apex Court by relying upon its decisions in **Sampelly Satyanarayan Rao vs Indian Renewable Energy Development Agency**[2] **and M/s. Womb Laboratories Pvt. Ltd. vs Vijay Ahuja**[3] held that a cheque issued as security pursuant to a financial transaction, cannot be considered as a worthless piece of paper. A security is given, deposited or pledged to ensure the fulfillment of an obligation undertaken. If a cheque is issued to secure repayment of the loan advanced and if the loan is not repaid on or before the due date, the drawee would be entitled to present the cheque for repayment, and if such a cheque is dishonoured, the consequences contemplated under Section 138 N.I. Act would follow. When a cheque is issued and is treated as 'security' towards repayment of an amount, with a time period being stipulated for repayment, all that it ensures is that such cheque cannot be presented prior to the date for repayment. A prior discharge of the loan is *sine qua non* for the drawee to not to present such a cheque for payment.

12. Hence, this court does not find any merit in the contention

[2] (2016) 10 SCC 458
[3] Crl.A.Nos.1382-1383 OF 2019 dated 11.09.2019

of the learned counsel for the revision petitioner that the cheques were issued as a security.

13. The contention of the learned counsel for the revision petitioner that the legal notice issued under Ex.P14 was defective does not find any merit, as no questions were raised in the cross-examination of PW1 in this regard. As such, the Criminal Revision Case is dismissed confirming the judgment of courts below in convicting the accused for the offence under Section 138 of the NI Act.

14. The Hon'ble Apex Court in **Kalamani Tex and Another v. P.Balasubramanian**[4] held that:

> *"As regard to the claim of compensation raised on behalf of the respondent, we are conscious of the settled principles that the object of Chapter XVII of the NIA is not only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for dishonour of cheque as well as civil liability for realisation of the cheque amount. It is also well settled that there needs to be a consistent approach towards awarding compensation and unless there exist special circumstances, the Courts should uniformly levy fine up to twice the cheque amount along with simple interest at the rate of 9% per annum"*

[4] **(2021) 5 SCC 283**

15. Hence, considering the above judgment, it is considered fit to confirm the judgments of the courts below in convicting the accused for the offence under Section 138 of NI Act but modifying the sentence to a fine of **Rs.19,01,386/-** (i.e., double the cheque amount of Rs.9,50,693/-) within two months from the date of this order and on such payment, the same to be paid as compensation to the complainant under Section 357 Cr.P.C. and in default of payment of the said amount by the accused within the time prescribed, he shall undergo simple imprisonment for two years.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

January 19, 2023
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