THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No. 1579 OF 2018

ORDER:

This Criminal Revision Case is filed by the petitioner/accused aggrieved by the judgment dated 20.06.2018 in Criminal Appeal No.58 of 2017 by the Principal Sessions Judge, Khammam upholding the judgment dated 07.02.2017 in C.C.No.1056 of 2013 on the file of I Additional Judicial Magistrate of First Class, Khammam convicting the accused for the offence under Section 138 of the Negotiable Instruments Act (for short, 'NI Act') and sentencing him to undergo simple imprisonment for a period of one year.

2. The respondent No.1 is the complainant in the said case. The parties are hereinafter referred to as arrayed before the trial court.

3. The case of the complainant was that the complainant and the accused were acquainted with each other and out of such acquaintance, the accused borrowed an amount Rs.7,25,000/- from the complainant to meet his chit business and promised to repay the same along with interest at the rate of 24% per annum but failed to repay the same. On repeated demands made by the complainant, the accused issued a cheque bearing No.287906 dated 29.06.2013 drawn on Axis

Bank Limited, Khammam for an amount of Rs.7,25,250/-. The complainant presented the said cheque but the same was returned with an endorsement "Insufficient Funds". Then the complainant issued legal notice on 04.09.2013 to the accused but the same was returned with the endorsement "door locked continuously for 7 days". As the accused did not choose to repay the amount, the complainant filed a private complaint.

4. The case was tried by the I Additional Judicial Magistrate of First Class, Khammam. The complainant examined himself as PW1 and marked Exs.P1 to P6 on his behalf. The accused failed to adduce any oral evidence or failed to mark any documents on his behalf.

5. On considering the oral and documentary evidence on record, the trial court found the accused guilty for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year.

6. Aggrieved by the said judgment of conviction and sentence recorded against him, the accused preferred an appeal. The appeal was heard by the Principal Sessions Judge, Khammam *vide* Criminal Appeal No.58 of 2017. The lower appellate court dismissed

the appeal confirming the judgment of conviction and sentence recorded by the I Additional Judicial Magistrate of First Class, Khammam.

7. Aggrieved further, the accused preferred this revision contending that the courts below failed to see that there was no legally enforceable debt, the cheque and promissory note were given as security for the partners of the accused and they were not returned by them and instead filed the present case through complainant. The courts below failed to see that the presumption under Sections 118(a) and 139 of NI Act were successfully rebutted by the accused and the burden was shifted to the complainant but he failed to prove the guilt beyond reasonable doubt. The courts below ought to have seen that the attesters to Ex.P6 promissory note were not examined to prove the passing of consideration and that the complainant was not holding any license to do money lending business as per A.P.(Telangana Area) Money Lenders Act. The courts below ought to have seen that the cheque was a forged one and the signature was not that of the accused and that the complainant was not having capacity to lend such huge amount and prayed to set aside the judgments of the courts below.

8. Heard the learned counsel for the revision petitioner/ accused and the learned counsel for the respondent No.2/complainant.

9. On perusal of the judgments of the courts below, the accused had not disputed his signature on the cheque marked under Ex.P1 or the promissory note marked under Ex.P6. The defence taken by him was that the cheque and promissory note were given as security to his partners and they were not returned by them and got filed the present case through complainant. The accused failed to examine himself and failed to adduce any defence evidence or failed to file any documents on his behalf. He gave suggestions to PW1 in his cross-examination that the blank signed promissory note was given to one Puvvada Krishna. His contention was that he and Puvvada Krishna had run the business in the name of M/s. Venus Granite Factory, but the business was run by one Puvvada Anji, thereafter, disputes arose between them and the accused relinquished his share of interest in the granite business, his partners did not return few documents to him. The trial court as well as the lower appellate court on considering the evidence observed that the accused had taken different stands, initially he stated that his business partners were one Shankar Reddy, Raj Reddy

and others but later taken a stand that he ran granite factory with one Puvvada Krishna and gave a suggestion that he issued legal notice on 15.01.2015 to one Puvvada Anji to return the original blank promissory notes and cheques but Anji did not return the same, there was no consistency in the pleas taken by the accused, no documentary evidence was filed by the accused to show that he did business in granite and who were his partners, or to whom the legal notice was given by him for return of the blank signed cheques or blank signed promissory notes held that the accused failed to raise a probable defence.

10. Both the trial court and the lower appellate court observed that the documents marked under Exs.P1 to P6 would prove the case of the complainant that the cheque was issued in discharge of legally enforceable debt by the accused to the complainant, the promissory note marked under Ex.P6 would prove the debt, cheque return memo marked under Ex.P2 would show that the cheque issued by the accused was dishonoured for insufficient funds and a notice was issued by the complainant to the accused vide Exs.P3 and P4 and the same was returned un-served vide Ex.P5.

11. The contention of the learned counsel for the revision petitioner was that no notice was issued to the accused and the complainant failed to prove all the ingredients of Section 138(b) of NI Act.

12. Learned counsel for respondent relied upon the judgment of the Hon’ble Apex Court in **N. Parameswaran Unni Vs. G. Kannan and Anr.**[1] wherein it was held that:

> *“11. A bare reading of Section 138 of the NI Act indicates that the purport of section 138 is to prevent and punish the dishonest drawers of cheques who evade and avoid the liability. As explained in clause (b) of the proviso, the payee or the holder of the cheque in due course is necessarily required to serve a written notice on the drawer of the cheque within fifteen days from the date of intimation received from the bank about dishonour.*
> *12. It is explicitly made clear under clause (c) of Section 138 of the NI Act,that this gives an opportunity to a drawer of the cheque to make payment within fifteen days of receipt of such notice sent by the drawee. It is manifest that the object of providing clause (c) is to avoid unnecessary hardship. Even if the drawer has failed to make payment within fifteen days of receipt of such notice as provided under clause (c), the drawer shall be deemed to have committed an offence under the Act and thereafter the drawee would be competent to file complaint against the drawer by following the procedure prescribed under Section 142 of the Act.*
> *13.It is clear from Section 27 of the General Clauses Act, 1897 and Section 114 of the Evidence Act, 1872, that once notice is sent by registered*

[1] AIR 2017 SC 1681

post by correctly addressing to the drawer of the cheque, the service of notice is deemed to have been effected. Then requirements under proviso (b) of Section 138 stand complied, if notice is sent in the prescribed manner. However, the drawer is at liberty to rebut this presumption.

14. It is well settled that interpretation of a statute should be based on the object which the intended legislation sought to achieve:

> *"It is a recognised rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning, the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its power invalid"*

15.This Court in a catena of cases has held that when a notice is sent by registered post and is returned with postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed. Though in the process of interpretation right of an honest lender cannot be defeated as has happened in this case. From the perusal of relevant sections it is clear that generally there is no bar under the NI Act to send a reminder notice to the drawer of the cheque and usually such notice carnot be construed as an admission of non-service of the first notice by the appellant as has happened in this case."

13. He also relied upon the judgment of the Hon'ble Apex Court in **State of Madhya Pradesh Vs. Hiralal and others**[2] wherein it was held that:

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[2] (1996) 7 SCC 523

> *"In view of the office report, it would be clear that the respondents obviously managed to have the notice returned with postal remarks "not available in the house", "House locked" and "shop closed" respectively. In that view, it must be deemed that the notices have been served on the respondents."*

14. As the revision petitioner/accused is not denying that the address on the legal notice was not that of him and as the notice was sent to him on his correct address, though the same was returned un-served, it can be considered as deemed service as per the judgment of the Hon'ble Apex Court in the above cases.

15. The Hon'ble Apex Court in **C.C.Alavihaji Vs. Palapitta Muhammed and another**[3] held that any drawer who claims that he did not receive the notice sent by post, can within 15 days of receipt of the summons from the court in respect of the complaint under Section 138 of NI Act, make payment of the cheque amount and submit to the court that he had made payment within 15 days on receipt of summons. A person who does not pay within 15 days of receipt of summons from the court along with copy of the complaint under Section 138 of NI Act cannot obviously contend that there was no proper service of notice as required under Section 138 of NI Act by ignoring the statutory

[3] 2007 Crl.L.J. 3214

provision or presumption to the contrary under Section 27 of General Clauses Act and Section 114 of Indian Evidence Act. The Hon'ble Apex Court also observed that any other interpretation in Clause (b) of the proviso would defeat the very object of the Legislation.

16. Hence, this Court does not find any merit in the contention of the learned counsel for the revision petitioner with regard to non-service of notice on him. The contention of the learned counsel for revision petitioner with regard to the complainant not having capacity to lend the amount would not stand to merit presumption as per the judgments of Hon'ble Apex Court in **Basalingappa vs Mudibasappa**[4], **Tedhi Singh vs Narayan Dass Mahant**[5] and **Rohitbhai J Patel vs The State Of Gujarat**[6]. His contention that the attesters to Ex.P6 promissory note were not examined to prove the passing of consideration would not merit consideration in view of the presumption under Section 118(a) of NI Act.

17. This Court does not find any irregularity or illegality in the judgments of the courts below to set aside the same. As such, it is

[4] (2019) 5 SCC 418
[5] Crl.A.No.362 of 2022 reported in 2022 LiveLaw (SC) 275
[6] AIR 2019 SC 1876

considered fit to uphold the judgments of the courts below with regard to the conviction of the accused for the offence under Section 138 of NI Act.

18. However, considering the judgment of the Hon'ble Apex Court in **Kalamani Tex and Another v. P.Balasubramanian**[7] wherein it was 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"*

It is considered fit to confirm the judgments of the courts below, convicting the accused for the offence under Section 138 of NI Act but modifying the sentence to a fine of Rs.14,50,500/- (i.e., double the cheque amount of Rs.7,25,250/-) to be paid within two months from the date of this order and on such payment, the same to be paid to the

[7] (2021) 5 SCC 283

complainant as compensation under Section 357 Cr.P.C. If the revision petitioner fail to pay the said amount 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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THE HON'BLE Dr. JUSTICE G. RADHA RANI

<u>CRIMINAL REVISION CASE No.1579 of 2018</u>

January 19, 2023

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