BAIL SLIP: The Petitioner/Accused was directed to be released on bail by the Order of the High Court dated 08/02/2011 in CRL.RC..M.P No.424 of 2011 in CRL.RC..No.274 of 2011.

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WEDNESDAY THE THIRTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL REVISION CASE NO: 274 OF 2011

Revision filed under Section 397 R/W 401 of CrPC aggrieved by the/ against the judgment and Conviction Crl.A.No. 78 of 2010, dt. 04-02-2011 on the file of the Sessions Judge, Mahabubnagar preffered against the judgement, dated 26-07-2010 in CC.No. 36 of 2008 on the file of Spl. J.F.C.M., Proh. and Excise Court at Mahabubnagar

Between:

1. AVULA RANGAIAH,, S/o. Balaiah, Business, R/O. MIG -17 ,HUDA Colony, Shamshabad, RR.District.

...REVISION PETITIONER/APPELLANT/ACCUSED

AND

1. THE STATE OF AP REP BY ITS PP HYD., Rep. by its Public Prosecutor, High Court of A.P., at Hyderabad.
2. Mohd Yaqoob,, S/o. Mohd. Khaja, Agriculture and Business, R/o. Gauraram Village, Post Maganoor, Bijinapalli Mandal, Mahabubnagar District.

...RESPONDENT/RESPONDENT/COMPLAINTANT

Counsel for the Petitioner(s):SRI. M ACHUTA REDDY

Counsel for the Respondent No.1:SRI VIZARATH ALI, ASSISTANT PUBLIC PROSECUTOR

Counsel for the Respondent No.2: N.A

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE E. V. VENUGOPAL

CRIMINAL REVISION CASE No.274 OF 2011

ORDER:

This Criminal Revision Case is filed against the judgment dated 04.02.2011 in Crl.A.No.78 of 2010 on the file of the learned Sessions Judge, Mahabubnagar (for short, "the appellate Court") in confirming the judgment dated 26.07.2010 in C.C.No.36 of 2008 on the file of the learned Special Judicial Magistrate of First Class Prohibition and Excise Court, at Mahabubnagar (for short, "the trial Court").

2. Heard Mr. Chandrasekhar, learned counsel representing Mr. M. Achutha Reddy, learned counsel for the petitioner and Mr. Vizarath Ali, learned Assistant Public Prosecutor appearing for the respondent State.

3. The brief facts of the case are that on 04.03.2005 respondent No.2/complainant gave an amount of Rs.2,75,000/- as loan to the petitioner/accused on acquaintance and the petitioner executed a promissory note acknowledging the debt. Inspite of repeated requests, the petitioner failed to repay the said loan. Finally, on 05.04.2007, the petitioner issued two cheques one bearing No.962383 dated 10.04.2007 for

Rs.1,25,000/- i.e., Ex P1 and another cheque bearing No.962382 dated 19.04.2007 for Rs.1,50,000/- i.e., Ex P2 drawn on SBH, Shamshabad. On presentation, the both the cheques were returned unpaid on 17.05.2007 with an endorsement 'insufficient funds'. Immediately, respondent No.2 informed the petitioner about the dishonour of cheques and issued legal notice on 26.05.2007 demanding repayment of loan within fifteen (15) days of receipt of notice. Petitioner refused to take notice and failed to repay the same. Hence, respondent No.2 filed complaint under Section 138 of Negotiable Instruments Act (for short, "NI Act").

4. Learned counsel for the petitioner submitted that the Courts below erred in appreciating the oral and documentary evidence in proper perspective and convicted the revision petitioner though he is not due of any amount under the alleged cheques. Therefore, seeks to allow the Revision.

5. Learned Assistant Public Prosecutor contended that the trial Court as well as the appellate Court after careful scrutiny of the evidence available on record rightly passed the respective judgments and the interference of this Court, at this stage is unwarranted. Therefore, seeks to dismiss the Revision.

6. The trial Court vide judgment dated 26.07.2010 in C.C.No.36 of 2008 found the petitioner guilty for the offence under NI Act and sentenced him to undergo simple imprisonment for a period of six months and pay fine of Rs.10,000/-, in default of payment of fine, to undergo further imprisonment for a period of one month. The period of remand, if any, undergone by the petitioner in judicial custody was set off under Section 428 Cr.P.C. Out of the fine amount, an amount of Rs.5,000/- was directed to be paid as compensation to the petitioner. Aggrieved thereby, the petitioner preferred an appeal.

7. The appellate Court vide judgment dated 04.02.2011 in Crl.A.No.78 of 2010 dismissed the appeal while confirming the sentence passed by the trial Court vide judgment dated 26.07.2010 in C.C.No.36 of 2008. Assailing the same, the present Revision.

8. On behalf of respondent No.2, the trial Court examined PW1 and marked Exs.P1 to P9. On behalf of defense, DWs.1 and 2 were examined and Exs.D1 to D7 were marked. PW1 deposed in the same lines as per the averments made in the complaint. The contention of DW1 was that PW1 is only a money lender and he obtained hand loan of Rs.2,75,000/- from PW1 on 06.03.2004

and not on 04.03.2005 as alleged. He repaid the said loan vide Exs. D1 to D7 and due to the dispute that arose with regard to payment of interest, PW1 filled the blank signed cheques issued to him, in an earlier transaction and filed the present case. He also got examined the Bank Manager to strengthen his contention that the cheques were issued in lieu of loan transaction dated 06.03.2004.

9. The trial Court upon careful consideration of oral and documentary evidence found that there was no dispute with regard to the factum of prior acquaintance between the petitioner and respondent No.2. It was also not in dispute that PW1 used to give hand loans to the petitioner for his necessities which the petitioner repaid. The only contention of petitioner was that he issued cheques in connection with another transaction and the same were misused by PW1. No where, in the entire case, the petitioner has taken the plea that he issued Exs.P1 and P2 as security after two days or some days, as the case may be, after obtaining loan on 06.03.2004. Secondly, the petitioner stated that at the time of receipt of Ex P9, he was residing at Balmoor (v) and that the notice was not issued on correct address. But if the contention of the petitioner was true, the notice would have

returned with an endorsement "addressee left" or "not present". But the postal envelope was returned with an endorsement "refused". Except taking such a bare plea, no evidence was put forth by him to substantiate his contention that he was not residing in the address as mentioned on the envelope on the alleged date. Hence, it was presumed that the petitioner received the statutory notice as contemplated under the NI Act.

10. Further, the petitioner pleaded that he repaid the loan amount of Rs.2,75,000/- vide Exs.D1 to D7 and obtained promissory note and receipt. But respondent No.2, instead of returning the blank cheques issued by him, misused them and filed the present case. Except taking the said plea, the petitioner did not prefer to adduce the promissory note or receipt as evidence. This leads to the presumption against the petitioner under Section 114(g) of the Indian Evidence Act which states that the evidence which could be and is not produced would, if produced, be unfavourable to him. Further, during cross-examination, petitioner admitted that he has not taken any recourse to see that the said cheques were returned back by respondent No.2 or when respondent No.2 stated that he could

not trace out, the same was either intimated to bank or police authorities.

11. During the cross-examination of PW1, nothing could be elicited to discredit his version. Further, petitioner admitted that there were other loan transactions existing between respondent No.2 and himself but, nothing was on record to prove that the payments made by the petitioner do correspond to the alleged transaction in dispute. Thus, respondent No.2 established the fact that the petitioner is due loan amount of Rs.2,75,000/- given on 04.03.2005. Therefore, the presumption under Sections.118 and 139 of NI Act were available to respondent No. 2 which state that the cheques were issued in discharge of legally enforceable debt and respondent No.2 established the guilt of the petitioner beyond reasonable doubt.

12. On an appeal being preferred, the appellate Court observed that the receipt of amounts under Exs. D1 and D2 was admitted by respondent No.2, but according to him, they were received in connection with another transaction. In such circumstances, the burden of proof lies upon the petitioner to establish that the amounts were received by PW1 in discharge of the present loan transaction, but the petitioner failed to discharge his burden. The

evidence of PW1 as to the issuance of the cheques i.e., Exs.P1 and P2 in discharge of legally enforceable debt has not been effectively rebutted by the petitioner.

13. Therefore, the appellate Court held that the trial Court upon elaborate discussion on the aspects raised by both the parties and relying on the decisions of the Apex Court in **K. Bhasker Vs. Sankaran Vidhya Bala and others**[1] and **Hiten P. Dalal Case**[2] rightly came to the conclusion that the petitioner was guilty of the offence under Section 138 of NI Act and such finding requires no interference. Therefore, dismissed the appeal while confirming the sentenced passed by the trial Court.

14. A perusal of record shows that this Court vide order dated 08.02.2011 suspended the sentence imposed against the petitioner and enlarged him on bail on executing a bond for an amount of Rs.10,000/- with two sureties each of like sum to the satisfaction of the trial Court. In the present case on hand, both the Courts have concurrently held that the petitioner was guilty of the offence under Section.138 of N.I.Act, which finding, in my considered view, does not call for interference, in exercise of revisional jurisdiction under Section 397 Cr.P.C.

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[1] AIR 199 SC 3762
[2] 2001 SCC (Crl) 960

15. There are no grounds much less valid grounds to interfere with the well considered judgment of the appellate Court and accordingly, this Revision is liable to be dismissed.

16. Accordingly, the Criminal Revision Case is dismissed.

Miscellaneous Petitions, pending if any, shall stand closed.

SD/- I.NAGA LAKSHMI
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Sessions Judge, Mahabubnagar. (with records if any)
2. The Spl. J.F.C.M., Proh. and Excise Court at Mahabubnagar
3. One CC to SRI. M ACHUTA REDDY Advocate [OPUC]
4. Two CCs to the PUBLIC PROSECUTOR, TSHC at Hyderabad [OUT]
5. Two CD Copies.

AA
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HIGH COURT

DATED:13/09/2023

ORDER

CRLRC.No.274 of 2011

THE CRIMINAL REVISION CASE
IS DISMISSED

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22/12/23
Htvd