

BAIL SLIP: The Appellant/Accused was directed to be released on bail by the Order of the High Court dated 06-11-2014 in CrI.R.C.M.P. No. 3660 of 2014 in CrI.R.C No. 2211 of 2014.

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**FRIDAY, THE TWENTIETH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

CRIMINAL REVISION CASE NO: 2211 OF 2014

Revision filed under Section 397 & 401 of Cr.PC, aggrieved by the Judgment in CrI.A. No.297/2012 dt. 05.11.2014 on the file of the I Additional Metropolitan Sessions Judge, Hyderabad, conforming the judgment in C.C. No. 97/2005 dt. 13-03-2012 on the file of III Additional Chief Metropolitan Magistrate, Hyderabad.

Between:

V. Koteswara Rao, S/o V. Narayana, aged 64 years, Occ Retired Employee,
R/o B3, Creative Castle, Road No. 4, Banjara Hills, Hyderabad

...Petitioner/ Respondent/ Accused

AND

1. G. Venkateshwar Rao, S/o G. Venugopal Rao, Aged 49 years, Occ Business,
R/o H.No. 8-3-945-F-509, Sri Nilaya Estates, Ameerpet, Hyderabad.

**.. Respondent/ Appellant/
Complainant**

2. The State of Telangana, Rep. by its Public Prosecutor, High Court at
Hyderabad, Hyderabad.

...RESPONDENT

Counsel for the Petitioner: SRI. P NAGENDRA REDDY

**Counsel for the Respondents: 2: Dr. Surepalli Prashanath Assistant
Public prosecutor (TG)**

Counsel for the Respondent: No:1: K CHAITANYA

The Court made the following: ORDER:-

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

CRIMINAL REVISION CASE No.2211 OF 2014

ORDER:

1. This Criminal Revision Case has been filed under Section 397 and 401 of Code of Criminal Procedure, 1973 assailing the Judgment dated 05.11.2014 in CrI.A.No.297 of 2012 passed by the I Additional Metropolitan Sessions Judge, Hyderabad, whereby, the Judgment of conviction under Section 138 of Negotiable Instrument Act, 1881 (for short "the NI Act") and sentence to undergo simple imprisonment for a period of one year and also to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for three months passed in CC No.97 of 2005 by the III Additional Chief Metropolitan Magistrate, Hyderabad has been affirmed against the revision petitioner/convict/accused (herein after referred as 'accused').

2. Heard Sri P.Nagendra Reddy, learned counsel for the revision petitioner and Dr.Surepalli Prashanth, learned Assistant Public Prosecutor appearing for respondent No.2-State.

3. The relevant facts in brief are that, respondent No.1/ complainant had filed a private complaint pleading that on the request of accused, he arranged a hand loan of Rs.3,50,000/- for business

purpose against the promissory note with an undertaking to repay the same with an interest at 24% per annum. However, the accused neglected repayment and on the demand, he issued a cheque/Ex.P1. When the complainant presented the cheque for collection, the same was dis-honoured with an endorsement "*funds insufficient*". Thereupon, the complainant got issued statutory notice/Ex.P4 on 29.12.2004, and the same was served on the accused under postal receipts/Exs.P5 to P7 and the accused got issued reply notice/Ex.P8. Thus, the complaint.

4. In enquiry, the complainant got examined himself as PW.1 and the witness to the promissory note as PW.2, and the person introduced the accused to the complainant as PW.3 and got marked Exs.P1 to P12. On the other hand, accused got examined himself as DW.1. The trial Court on analyzing the materials, concluded the guilt of the accused and convicted him *vide* Judgment in C.C. No.97 of 2005, dated 13.03.2012. Thereafter, the accused preferred an appeal *vide* CrI.A.No.297 of 2012. The I Additional Metropolitan Sessions Judge, Hyderabad, after reconsideration, passed the impugned Judgment, confirming the conviction and sentence passed by the Trial Court. Aggrieved thereby this revision case has been preferred.

5. In the revision, learned counsel for the revision petitioner/accused would contend that the Courts below erroneously disregarded the defence pleadings and the evidence of the accused/DW.1 that the cheque and promissory notes were entrusted towards security in another business transaction, but the complainant had misused them for personal gain. Further, the complainant failed to place any material to establish the transaction and existence of legally enforceable debt. That apart, the complainant has not pleaded or placed money lending licence to legally sustain transaction. Additionally, pleaded that the revision petitioner is now an elderly person, who is aged about 80 years, as such prayed for reconsidering the substantive sentence imposed against him.

6. On the other hand, leaned counsel for the complainant would submit that the trial and Appellate Courts have considered the defence raised by the accused in detail and as there is no tenable material to support the defence except the self-serving declaration. Therefore, the Courts below had rightly convicted the accused. However, the Courts ought to have granted the cheque amount with interest as compensation, thus prayed for dismissal of the petition.

7. I have perused the materials on record.

8. In the cross-examination of the complainant/ PW.1, the accused/ DW.1 suggested that the cheque/Ex.P1 was issued by him towards security in another business transaction. This claim itself is an implied admission that Ex.P1 cheque was drawn on the account of accused and it bears his signature. Return of unpaid cheque by the banker is not in dispute and proper service of statutory notice/Ex.P2 is evident by the reply notice/Ex.P7 of the accused. In such position, it shall be held that the complainant had prima-facie established the ingredients for prosecution under Section 138 of the NI Act, as such, the presumptions shall come in favour of the complainant.

9. The accused, to rebut the presumptions, had contended that Ex.P1/cheque and the promissory note/Ex.P9 were issued to PW.3 in another business transaction and they were misused. On this aspect, the record disclosing that after examination of accused as DW.1, the complainant got summoned PW.3 and in his chief examination supported the case of the complainant and no favourable fact was elicited in his cross-examination by the accused. In that position, the defence claim stood stale. In addition, notably in reply notice, the accused specifically pleaded that, the complainant had obtained amount from the accused for separating the business in the name and style C and F agents of Loopin Laboratories in Hyderabad. The

amount was repaid and no promissory note or cheque was issued in favour of the complainant. These averments are making out that the accused had taken diverse pleas in regard to issuance of cheque and promissory note. These aspects are establishing that the defence claim is unsupported by any tenable material. In contrast, the evidence of PW.2 is establishing the complaint claimed transaction and as it is not the case of the accused that the transaction was part of money lending business of the complainant, examining the requirement of licence in this regard, has no relevance.

10. As the defence theory is falling short to rebut the presumptions, it shall be held that, the Courts below have rightly considered the materials on record in arriving at the conclusions. Hence, the conviction of the accused under Section 138 of the NI Act, deserves affirmation.

11. However, in regard to the sentence, having regard to the age of the accused and elapse of time from the date of filing of the case, this Court is of the considered view that instead of imposition of substantive sentence, sentencing the accused to pay fine to the extent of cheque amount and granting compensation to the complainant, would meet the ends of justice.

12. In the result, the criminal revision case is allowed in part by maintaining the conviction, the sentence is modified to pay fine of Rs.3,60,000/-, in default, Simple Imprisonment for a period of six (06) months. On realization of the fine amount, the complainant shall be paid Rs.3,50,000/- as compensation under Setion 357 of the Code of Criminal Procedure (Cr.P.C).

As a sequel, miscellaneous petitions if any, stands closed.

Sd/- B. SATYAVATHI
DEPUTY REGISTRAR

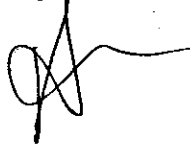
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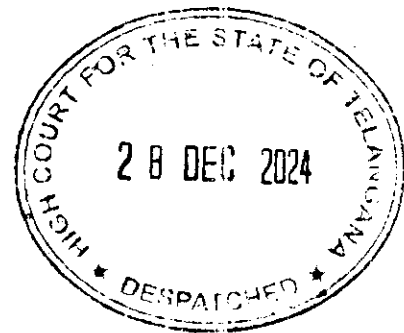
To,

1. The III Additional Chief Metropolitan Magistrate, Hyderabad.
2. The I Additional Metropolitan Sessions Judge, Hyderabad.
3. The Superintendent, Central Prison, Chanchalguda, Hyderabad.
4. One CC to Sri. P Nagendra Reddy Advocate [OPUC]
5. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad [OUT].
6. One CC to SRI K CHAITANYA Advocate [OPUC].
7. Two CD Copies.

VGS/gh



CRLRC.No.2211 of 2014



CRIMINAL REVISION CASE IS ALLOWED

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09/12/2024