THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CRIMINAL REVISION CASE No.849 of 2009

ORDER:

The revision petitioner calls in question her conviction for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I.Act, 1881) praying for interference of this Court in terms of Sections 397 and 401 Cr.P.C.

2. Respondent No.1 is the State. Respondent No.2 is the complainant on whose complaint this revision petitioner was prosecuted and punished.

3. C.C.No.299 of 2006 was on a complaint and after due trial, learned V Additional Munsif Magistrate, Guntur by a judgment dated 03.07.2007 found this revision petitioner guilty for the offence under Section 138 of the N.I.Act, 1881 and convicted her and sentenced her to undergo Rigorous Imprisonment for six months and pay a fine of Rs.500/- with a default sentence of Simple Imprisonment for one month.

4. Convict's prayer in appeal was duly heard by learned V Additional Sessions Judge (Fast Track Court), Guntur and by a judgment dated 29.05.2009 the learned Additional Sessions Judge did not find any merit in that appeal. However, moved by

the pitiable physical condition of the woman he was pleased to reduce the incarceration from six months to three months.

5. In a challenge to that, this revision is brought. The revision petitioner filed the revision through her learned counsel. In Crl.R.C.M.P.No.1157 of 2009 by an order dated 03.06.2009 this Court suspended the execution of substantive sentence and released the convict on bail. Having utilized that privilege, in the last all these years there has never been any representation from the revision petitioner in person or through her advocate. In adjudication of criminal revisions, the revisional Court is vested with a jurisdiction by Section 403 Cr.P.C. to the effect that it is the option of the revisional Court either to hear party or her counsel on either side or not to hear and decide a revision. This provision reflects the theme of revisional jurisdiction. The revision petition by itself must indicate to the revisional Court the illegality, impropriety or irregularity of the proceedings that took place before the Courts below. It was for correcting such errors only revisional Court exercises its jurisdiction. This jurisdiction is different from appeals. Despite Section 403 Cr.P.C. for nearly 13 years time was granted on several occasions for revision petitioner to

submit arguments. None came up to submit any arguments. For respondent No.1, learned Special Assistant Public Prosecutor submitted arguments. For respondent No.2, none has come to argue.

6. On perusal of the record, the point that falls for consideration is:

"Whether the Courts below erroneously excluded to give weight to the defence evidence and improperly believed the evidence of prosecution and therefore, the judgments of the Courts below are incorrect?"

7. **Point:**

The facts of the case are straight and simple. Complainant and accused are known to each other. The accused borrowed Rs.1,50,000/- and executed the original of Ex.P.6-promissory note in favour of the complainant on 20.05.2005. Sometime later the complainant was demanding the accused for repayment. Therefore towards repayment of principal as well as the interest, the accused drew a cheque on Andhra Bank, Koritepadu Branch, Guntur where she has been maintaining an account. The payee is the complainant and the

date of cheque is 21.02.2006. The money mentioned in the cheque is Rs.1,75,000/-. Accused handed over the cheque to the complainant. Immediately the cheque was presented by the complainant for collection but the banker returned it unpaid and issued a memo dated 22.02.2006-Ex.P.2 mentioning that the funds in the account of the accused were insufficient to honour the cheque. Soon thereafter on 24.02.2006 complainant got issued a statutory notice-Ex.P.3 to the accused calling upon her to repay the cheque amount within 15 days. Accused received it under Ex.P.4-postal acknowledgment. She did not oblige the terms of the notice and did not pay the cheque amount but gave a reply notice dated 11.03.2006 in Ex.P.5. These facts are alleged in the complaint and these facts were proved by the complainant by his evidence as PW.1 where these documents were marked as Exs.P.1 to P.6. Learned trial Court believed all that evidence.

8. At the trial, the accused did not testify but she examined one of her neighbours as DW.1. She said certain things in her examination in chief. However, it was during her cross-examination she came out with the straight admission that she had absolutely no knowledge of any facts and any transactions

that took place between accused and complainant. Thus, through the evidence of DW.1, nothing relevant to the facts at issue were brought to the notice of the trial Court and therefore that evidence of DW.1 was found unworthy for deciding any fact in issue. Before the learned trial Court one and the only defence that was taken by the accused/revision petitioner was that she has a son-in-law by name Ch.Tirumalavasu and he was in need of money and he borrowed money from a person by name Malyadri. It was at that time, the creditor Malyadri demanded for security. As a mother-in-law to the debtor the accused said to have very liberally signed cheques and pronotes without filling up any columns and gave them to Malyadri. Her son-in-law Tirumalavasu repaid the debt but Malyadri did not give back the signed blank pronotes and cheques. However, Malyadri gave some of them to complainant and the complainant filed this spurious complaint utilizing those documents. Learned trial Court minutely appreciated this defence contention and recorded that the entire transaction taken up as a defence is a transaction that is alien to the facts in the case. It observed that the connection between complainant and Malyadri is not proved. The allegation that

Tirumalavasu borrowed money from Malyadri is not borne out by any document and Tirumalavasu himself did not depose in favour of his own mother-in-law/accused and no correspondence between that debtor and creditor and no instruments and no papers of discharge of debt were brought on record. The trial Court also pointed out that if at all the accused believed truth in those versions ventilated by her, she should have certainly issued a notice to creditor Malyadri demanding return of her blank signed documents. She did not do that. Thus, in proof of the entire defence version, the trial Court observed, there was no material to think any probabilities. It was for that reasons it did not accept the defence version. It chose to convict and sentence the accused.

9. When the matter went in appeal, the learned V Additional Sessions Judge (Fast Track Court), Guntur heard all the submissions once again and he independently went through the entire evidence on record and evaluated the correctness of prosecution evidence in the context of defence version and found that the judgment of the trial Court was completely right on facts and law. It observed that by the defence taken by the accused all signatures on Ex.P.1-cheque and Ex.P.6-pronote

were found admitted. By virtue of presumptions contained in Section 118 of the N.I.Act, 1881 and by virtue of presumption contained in Section 139 of the N.I.Act, 1881 and in the context of the evidence available on record, it found that there was legitimate passage of cheque from the hands of accused to the hands of complainant and that cheque was dishonoured for insufficient funds. Both the Courts below recorded that once due execution of cheque is proved Courts have to presume that the cheque was given towards discharge of debt or liability. They observed that in rebuttal, no fact was probabilized by the defence and therefore, the presumptions stood unrebutted. It was in that view of the matter, learned Additional Sessions Judge approved the findings of the trial Court and dismissed the appeal.

10. The various grounds mentioned in this revision speak only about appreciation of evidence and reiteration of unproved defence contention. The Court which tried the case was competent Court of jurisdiction and prescribed summons procedure was followed and althroughout accused was defended by a counsel and the witnesses were permitted to be cross-examined and there is absolutely no defect in the trial process

and in this revision the revision petitioner has not been questioning these aspects. When both the Courts below concurrently found the facts on record, this Court cannot reappreciate and reach to other conclusions except when this Court is shown the perversity in appreciation of evidence or when it is shown that the material on record was not considered or that certain material which was not part of the evidence was considered to arrive at the conclusions. It must at least be shown that on the proved facts the conclusions arrived at are arbitrary or frivolous. The grounds mentioned in the revision do not touch upon any of these fundamentals. Despite that, this Court grants concession to what is mentioned in the grounds of revision and it has gone through the entire material on record and it found that the clear case of borrowal evidenced by Ex.P.6 and repayments sought to be made by Ex.P.1-cheque and failure to repay despite receipt of Ex.P.3-notice is evident and the entire defence version has no basis of any evidence and that made out a perfect case for finding guilt of accused under Section 138 of the N.I. Act, 1881 and both the Courts below did it accordingly. There is nothing to interfere. Point is answered against the revision petitioner.

11. In the result, the Criminal Revision Case is dismissed confirming the conviction and sentence recorded against the revision petitioner/accused in the judgment dated 29.05.2009 of learned V Additional Sessions Judge (Fast Track Court), Guntur in Criminal Appeal No.227 of 2007. Revision petitioner/Pothuri Parvathi shall submit herself on or before 28.03.2023 before the learned trial Court, failing which the learned V Additional Munsif Magistrate, Guntur shall secure her presence and enforce the punishment.

12. Registry is directed to dispatch a copy of this order along with the lower Court record, if any, to the Court below on or before 24.03.2023. A copy of this order be placed before the Registrar (Judicial), forthwith, for giving necessary instructions to the concerned Officers in the Registry.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 21.03.2023
Ivd

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

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