THE HON'BLE SRI JUSTICE V.SRINIVAS

CRIMINAL REVISION CASE No.1700 of 2009

ORDER:

This Revision is arising out of judgment dated 07.10.2009 passed in Crl.A.No.208 of 2009 on the file of the court of learned IV Additional Sessions Judge, Guntur, wherein the learned Judge has dismissed the appeal confirming the conviction and sentence imposed against the revision petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') in the judgment dated 18.05.2009 in C.C.No.387 of 2008 passed by the learned Special Judicial I Class Magistrate for Excise, Guntur.

2. The brief facts of the complaint filed by the complainant/2nd respondent are as follows:

The petitioner/accused borrowed an amount of Rs.60,000/- on 05.04.2008 from the complainant for his family expenses and executed a promissory note (Ex.P1) agreeing to repay the same with interest at the rate of 24 % p.a. either to the complainant or to his order on demand. On repeated demands, the petitioner/accused issued a cheque (Ex.P2) bearing No.078563 dated 29.08.2006 for an amount of Rs.81,000/- drawn on Andhra

Bank, Kannavarithota, Guntur, towards part payment of the debt due under the promissory note. When the complainant presented the said cheque, the same was returned with an endorsement "funds insufficient". Thereafter, the complainant got issued legal notice to the petitioner/accused calling upon him for payment of the cheque amount within 15 days from the date of receipt of the said notice. In spite of receiving the same, the petitioner did not pay the amount. Hence, the 2nd respondent herein filed a private complaint.

3. During the course of trial, the complainant himself was examined as PW.1 and also examined Assistant Manager of Andhra Bank as PW2 and marked Ex.P1 to Ex.P5. On behalf of the accused, the accused himself was examined as DW.1 and no documentary evidence was adduced.

4. By considering the material on record, the trial Court convicted the accused for the offence under Section 138 of the Act and sentenced to undergo Simple Imprisonment for a period of six(06) months and to pay a fine of Rs.5,000/-, in default, to suffer Simple Imprisonment for two months.

5. Against the said judgment, the revision petitioner/accused preferred an appeal before the court of learned IV Additional Sessions Judge, Guntur, and the same was dismissed by confirming the trial Court's judgment.

6. Being aggrieved, the present revision has been filed by the petitioner/accused.

7. Heard Sri Ch.Janardhan Reddy, learned counsel for the revision petitioner, the learned Special Assistant Public Prosecutor representing the 1st respondent-State and Sri M.D.Saleem, learned counsel for the 2nd respondent.

8. The point that arises for consideration in this revision is:

> *"Whether there is any illegality or impropriety in the sentence imposed by the trial Court as confirmed by the appellate Court i.e.* IV Additional Sessions Judge, Guntur*?"*

9. Learned counsel for the petitioner submits that the courts below erred in convicting the petitioner without appreciating the evidence in proper perspective; that there is discrepancy between the evidence of PW.2 and Ex.P2-cheque with regard to mentioning of amount in figures and words; that the amount under Ex.P2-cheque has already been discharged by the petitioner and that the

evidence of PW.1 and PW.2 is not corroborated with Ex.P2-cheque. Hence, prayed to allow the revision.

10. Learned counsel for the 2nd respondent-complainant submits that both the courts concurrently held that the accused borrowed the amount for his family necessities and he issued Ex.P2-cheque towards part payment of debt and the said cheque was dishonoured with an endorsement 'insufficient funds'; that the petitioner has not filed any documentary evidence to show that the petitioner has discharged the amount due under the promissory note; that by considering all the aspects, the trial Court as well as the appellate Court came to conclusion that the accused had failed to substantiate the defence taken by him and thereby, the petitioner/accused is liable to pay the cheque amount as the same was dishonoured for the reason of funds insufficient. Hence, this court warrants no interference with the concurrent findings of both the Courts below and prayed to dismiss the revision.

11. This Court perused the material on record. It is a fact that was elicited from the record that the petitioner/accused borrowed an amount of Rs.60,000/- from the complainant and a promissory note (Ex.P1) was executed agreeing to repay the same with

interest at the rate of 24 % p.a. either to the complainant or to his order on demand. On repeated demands, the petitioner/accused issued a cheque (Ex.P2) bearing No.078563 dated 29.08.2006 for an amount of Rs.81,000/- drawn on Andhra Bank, Kannavarithota, Guntur, towards part payment of the debt due under the promissory note. When the complainant presented the said cheque said to be issued by accused, it was returned with an endorsement "funds insufficient". Thereafter, the complainant got issued legal notice to the petitioner/accused and the same was received by the accused. Since non-discharge of amount by the accused within stipulated time, respondent No.2-complainant herein has compelled to file a private complaint and the same was numbered as C.C.No.387 of 2008. The record also further shows that the petitioner herein, who is the accused, admittedly, issued a cheque/Ex.P2 and said cheque, according to the 2nd respondent was issued as a part payment for discharge of amount due under the promissory note.

12. Coming to the contention of the learned counsel for the petitioner that there is a discrepancy with regard to the amount in the figure and words is concerned, PW.2, who was the Assistant Manager of Andhra Bank, stated that usually if there was any

difference with regard to words and figures, the bank will return the cheque on that ground alone. She further stated that if really the petitioner was having sufficient amount in his account to honour the cheque, then Ex.P2-cheque will be returned with an endorsement that the figure was not tallied with the words. So, from the evidence of PW.2, it is clear that since there are no sufficient funds in the account of petitioner, the cheque was returned with an endorsement 'funds insufficient'. If the petitioner has sufficient amount in his account for honour of the cheque amount, then the question of not tallying the amount in figures and words would be arisen.

13. The further contention of the learned counsel for the petitioner is that the amount borrowed under the promissory note was discharged but the cheque and promissory note were not returned by the complainant as they are not traced out. There is no pleading to that effect. If really the petitioner discharged the amount due under the promissory note, he would have issued the reply to the notice of the complainant calling upon him to return the cheque. Moreover, no explanation is offered by the petitioner that how the cheque containing his signature was in possession of the complainant.

14. In view of the foregoing discussion, it is clearly established that the cheque was issued by the petitioner/accused in discharge of legally enforceable debt and the amount due under the cheque is liable to be discharged by him.

15. The trial Court as well as Appellate Court had presumed that the petitioner/accused issued the cheque for discharge of debt and same was not rebutted by any legal evidence by the petitioner.

16. In this connection, in ***Bir Singh v Mukesh Kumar***[1], the Hon'ble Apex Court held that: the trial Court and the Appellate Court rejected the plea of the respondent-accused that the appellant-complainant had misused a blank signed cheque. It was also held in the said judgment that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the revisional Court to re-analyze and re-interpret the evidence on record. Under these circumstances, this Court cannot reappraise the evidence placed on record by petitioner as well as respondent in the trial Court.

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[1]**(2019) 4 SCC 197**

17. During the course of arguments, learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in ***R.Vijayan v Baby***[2]**,** wherein it was observed that some Magistrates went by the traditional view, that the criminal proceedings were for imposing punishment and did not exercise discretion to direct payment of compensation, causing considerable difficulty to the complainant, as invariably, the limitation for filing civil cases would expire by the time of the criminal cases were decided. It was further observed in the said judgment, unless there were special circumstances, in all cases of conviction, the Court should uniformly exercise the power to levy fine up to twice the cheque amount and keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss, direct payment of such amount as compensation.

18. It is also keep in mind another judgment of the Hon'ble Apex Court in ***Meters and Instruments Private Limited v Kanchan Mehta***[3],wherein it was held that:

> ***"i) Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but***

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[2]**(2012) 1 SCC 260**
[3]**2017 AIR (SC) 4594**

the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

ii) The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.

iii) Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

iv) Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C. to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C. With this approach, prison sentence of more than one year may not be required in all cases.

> ***v) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonor of cheque, it is unnecessary for the Magistrate to record any further preliminary' evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 Cr.P.C. The scheme is to follow summary procedure except where exercise of power under second provision to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances".***

19. Considering the above authoritative pronouncements and as discussed supra, this Court does not find any grounds to interfere with the concurrent findings recorded by both the Courts below regarding conviction under Section 138 of the Negotiable Instruments Act against the petitioner. However, to meet the ends of justice, the petitioner/accused is directed to pay an amount of Rs.81,000/- (Rupees Eighty one thousand Only) within a period of four (04) weeks from the date of receipt of a copy of this order, in default the petitioner/accused shall undergo the sentence of imprisonment as well fine as affirmed by the trial Court, which was confirmed by the Appellate Court. In case any failure on the

part of the revision petitioner in appearing before the trial Court as directed supra in making the payment of compensation amount, the trial Court is free to take coercive steps to secure the presence of the revision petitioner and to execute the sentence imposed against him.

20. With the above observations, the present Criminal Revision Case is disposed of. A copy of this order shall be send to the trial Court and the learned Magistrate concerned shall take steps against the petitioner/accused to serve the sentence, if he fails to comply with the condition stated in penultimate paragraph of this order.

21. Interim orders granted earlier if any, stand vacated.

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

JUSTICE V.SRINIVAS

Date:22.02.2024
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THE HON'BLE SRI JUSTICE V.SRINIVAS

CRIMINAL REVISION CASE No.1700 of 2009

DATE: 22.02.2024

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