

HIGH COURT OF ANDHRA PRADESH**Bench : A.V Ravindra Babu, J.****Date of Decision : 22-02-2024**

Criminal Revision Case No: 657 of 2010

PUVVADA VENKATA KRISHNA MURTHY**Vs.****THE STATE OF A.P REP BY PP AND ANOTHER****Legislation:**

Section 138 of the Negotiable Instruments Act (N.I. Act)

Sections 207, 251, 313, 388 of the Code of Criminal Procedure (Cr.P.C.)

Subject: Criminal Revision Case against conviction under Section 138 of the N.I. Act for cheque dishonor due to insufficient funds.**Headnotes:**

Dishonor of Cheque – Conviction under Section 138 of N.I. Act – Accused issued a cheque for Rs. 66,000/- towards repayment of borrowed money, which was dishonored due to insufficient funds – Complaint filed under Section 138 of N.I. Act. [Para 3]

Trial Proceedings – Evidence and Verdict – P.W.1 (complainant) examined, and documents Ex.P.1 to Ex.P.10 marked – Trial Court convicted the accused, sentencing to simple imprisonment and fine – Accused's plea of not guilty and claim for trial noted. [Paras 4-6]

Appellate Court's Decision – Dismissal of Criminal Appeal No. 7 of 2008 – Confirmation of conviction and sentence by Additional Metropolitan Sessions Judge, Visakhapatnam. [Para 7]

Revision in High Court – Arguments and Analysis – Defense's argument of insufficient evidence and improper evidence examination – High Court's examination of trial and appellate court's decisions and evidence – Reiteration of the legally enforceable debt and the dishonor of the cheque. [Paras 8-14]

Judgment Confirmation – High Court's Decision – Dismissal of Criminal Revision Case – Confirmation of judgment dated 16.02.2010 in Criminal Appeal No. 7 of 2008 – Conviction and sentence upheld. [Para 17]

Directions for Compliance – Registry directed to certify order to trial court for carrying out the sentence – Record and order to be forwarded to the trial court. [Paras 18-19]

Referred Cases: None specified in the judgment.

Representing Advocates:

Counsel for Petitioner: J. Sarat Chandra Babu, representing K. Joseph.

Counsel for Respondent: Not mentioned.

ORDER

A.V Ravindra Babu, J. - Challenge in this Criminal Revision Case is to the judgment, dated 16.02.2010 in Criminal Appeal No.7 of 2008, on the file of I Additional Metropolitan Sessions Judge, Visakhapatnam, ("Additional Metropolitan Sessions Judge" for short), whereunder the Additional Metropolitan Sessions Judge dismissed the Criminal Appeal confirming the conviction and sentence imposed against the accused under Section 138 of Negotiable Instruments Act ("N.I. Act" for short) in C.C.No.101 of 2004, on the file of III Additional Chief Metropolitan Magistrate, Visakhapatnam at Gajuwaka ("Additional Chief Metropolitan Magistrate" for short).

2. The parties to this Criminal Revision Case will hereinafter be referred to as described before the learned III Additional Chief Metropolitan Magistrate, Visakhapatnam at Gajuwaka, for the sake of convenience.

3. The case of the complainant, in brief, according to the averments set out in the complaint filed before the learned III Additional Chief Metropolitan Magistrate, Visakhapatnam, alleging the offence under Section 138 of N.I. Act, is that the complainant and accused had acquaintance with each other. The accused borrowed a sum of Rs.50,000/- on 11.04.2002 to clear his sundry debts from the complainant, agreeing to repay the same with interest at 24% per annum and executed a promissory note on the same day in favour of the complainant. Later, when the complainant insisted and demanded for repayment of loan amount, accused issued a cheque bearing No. 359437 for Rs. 66,000/-towards principal and interest on 14.08.2003 of his account drawn on UCO Bank, Balacheruvu Branch, Visakhapatnam Steel Plant. The accused promised to the complainant that he could realize the cheque amount by depositing the same in his account. The complainant deposited the cheque in his account at the request made by the accused on 21.08.2003 which was returned as "insufficient funds". He received the cheque returned memo, dated 22.08.2003. He waited for one month and again submitted the cheque in his account on 23.09.2003 and in that occasion also it was returned

as "insufficient funds" along with returned memo, dated 24.09.2003. Again the complainant deposited the said cheque for collection in the same bank on 16.10.2003 and in that occasion also it was returned as "insufficient funds" vide cheque returned memo, dated 26.10.2003. Later, the complainant got issued a registered statutory notice on 28.10.2003 demanding the accused to make good of the cheque amount. The notice sent to the residential address of the accused was returned, as the accused had not claimed. Hence, the complaint.

4. The learned Additional Chief Metropolitan Magistrate took cognizance of the complaint under Section 138 of N.I. Act. After appearance of the accused and after compliance of Section 207 of the Code of Criminal Procedure ("Cr.P.C." for short), the accused was examined under Section 251 of Cr.P.C. with reference to the allegations in the complaint for which he denied the same, pleaded not guilty and claimed to be tried.

5. During the course of trial, on behalf of the complainant, P.W.1 was examined and Ex.P.1 to Ex.P.10 were marked. After closure of the evidence of complainant, accused was examined under Section 313 of Cr.P.C. with reference to the incriminating circumstances in the evidence let in by the complainant, for which he denied the same and stated that he need time to settle the matter. The accused did not adduce any defence evidence.

6. The learned Additional Chief Metropolitan Magistrate on considering the oral as well as documentary evidence, found the accused guilty of the offence under Section 138 of N.I. Act, convicted him under Section 255(2) of Cr.P.C. and after questioning him about the quantum of sentence, sentenced him to suffer simple imprisonment for six months and to pay fine of Rs.500/- in default to suffer simple imprisonment for 15 days. Felt aggrieved of the aforesaid conviction and sentence, the unsuccessful accused filed Criminal Appeal No.7 of 2008, on the file of Additional Metropolitan Sessions Judge and it was dismissed on merits confirming the conviction and sentence. Felt aggrieved of the same, the unsuccessful appellant filed the present Criminal Revision Case.7. Now, in deciding this Criminal Revision Case, the point for determination is as to whether the judgment, dated 16.02.2010 in Criminal Appeal No.7 of 2008, on the file of I Additional Metropolitan Sessions Judge, Visakhapatnam is sustainable under law and facts and whether there are any grounds to interfere with the same?

Point:-

8. Sri J. Sarat Chandra Babu, learned counsel, representing Sri K. Joseph, learned counsel for the petitioner, would submit that the complainant failed to prove the case against the accused beyond reasonable doubt. Both the trial Court as well as the Appellate Court recorded conviction against the accused without proper appreciation of the evidence on record. The complainant sought to rely upon Ex.P.7-cheque returned memo, dated 26.10.2003, which was on a Sunday and it was a non-banking day and it was not possible to the bank authorities to return the memo on Sunday, as such, the entire case of the complainant was fabricated and both the trial Court as well as the Appellate Court failed to take into consideration of the same. The complainant failed to prove the case beyond reasonable doubt, as such, the Criminal Revision Case is liable to be allowed.

9. In spite of time granted, no arguments are advanced on behalf of the second respondent/complainant.

10. It is the case of the complainant that accused having borrowed a sum of Rs.50,000/- on the basis of promissory note, dated 11.04.2002, issued Ex.P.1-chque towards discharge of a legally enforceable debt and that it was dishonoured. Both the trial Court as well as the Appellate Court found favour with the case of the complainant. The scope of this Criminal Revision Case is limited as to whether the judgment of the learned Additional Metropolitan Sessions Judge suffers with any illegality or irregularity.

11. As seen from the case of the complainant, admittedly, he was bound to prove that the accused issued Ex.P.1 cheque towards discharge of a legally enforceable debt. As seen from the evidence of P.W.1, he put forth the facts in his chief examination affidavit in tune with the pleadings. Through his examination Ex.P.1 to Ex.P.10 were marked. A look into cross examination of P.W.1 on behalf of the accused means that there was no dispute about the acquaintance between the complainant and accused. P.W.1 reiterated in his cross examination that he lent Rs.50,000/-to the accused on 11.04.2002 and accused executed promissory note. Accused did not repay the same. He again reiterated that accused issued a cheque by calculating the amount as Rs.66,000/-and he gave the cheque, drawn on UCO Bank, Balacheruvu Branch, Visakhapatnam Steel Plant. He denied that the cheque does not belong to the accused. He reiterated that he presented the cheque on 21.08.2003 and it was returned as "insufficient funds". He further spoke of about presentation of the same cheque again on 23.09.2003 and it was dishonoured. He further testified in cross examination about the

representation of same cheque on 16.10.2003 and subsequent to its dishonour. He denied that he did not present the cheque on 26.10.2003 as it was Sunday.

12. It is to be noted that there was no cross examination disputing the signature of the accused on promissory note as well as cheque. There was no cross examination about the fact that the complainant lent an amount of Rs.50,000/- to the accused on 11.04.2002. On the other hand, the defence of the accused is that Ex.P.1-cheque does not belong to him. There was no denial of the fact that the accused was having a bank account and he was having cheque book facility. It is a case where P.W.1 affirmed and confirmed that the accused issued Ex.P.1-cheque. If the cheque was not belonging to the accused and it has nothing to do with the account of the accused, he would not kept quiet to rebut the evidence of P.W.1. Thus, the contention of the accused that Ex.P.1 does not belong to him is devoid of merits. A look at Section 313 of Cr.P.C. examination of accused goes to prove that the accused wanted time to settle the matter with the complainant. It is a fact that the accused did not step into witness box to rebut the evidence of P.W.1. The evidence of P.W.1 coupled with Ex.P.1 to Ex.P.10 remained un-rebutted. The evidence on record proves the factum of existence of a legally enforceable debt against the accused.

13. Coming to the factum of dishonor of cheque, there is no prohibition that the complainant should have presented the cheque only at once. Cheque can be presented in number of times. Every presentation and its dishonor would give fresh cause of action in favour of the complainant. There was no dent in the cross examination of P.W.1.

14. Another contention canvassed by the accused was that Ex.P.7-cheque returned memo was dated 26.10.2003 and it was Sunday on that day, as such, the case of the complainant cannot be believed. It is to be noted that the presentation of cheque by the complainant was not confined to single occasion and it was presented to the bank in number of occasions. As seen from Section 146 of Negotiable Instruments Act, when a cheque returned memo was issued by the bank, the Court shall presume the fact of dishonor of cheque unless and until the same is proved. There was an official note on Ex.P.7 by the bank that the cheque has been dishonoured. Hence, the case of the complainant cannot be disbelieved simply basing on the fact that on 26.10.2003 was happened to be at Sunday. The complainant has no necessity to fabricate Ex.P.7. There was also a possibility for making the date

as 26.10.2003 by the bank authorities mistakenly. Apart from this, when the notice was sent to the accused to the registered address, it was returned as unclaimed. Thus, the service of statutory notice can only be taken as sufficient.

15. As seen from the judgment of the learned Additional Metropolitan Sessions Judge, he minutely discussed with every contention raised by the appellant in the grounds. It is quite astonishing that even appellant in the aforesaid appeal did not prosecute the appeal properly and he was evading to get the arguments advanced. The learned Additional Metropolitan Sessions Judge by recording reasons disposed the Criminal Appeal on merits.

16. Having regard to the overall facts and circumstances and considering the material on record, absolutely, the judgment of the learned Additional Metropolitan Sessions Judge, dated 16.02.2010 in Criminal Appeal No.07 of 2008 cannot be said to be illegal and irregular. Both the learned Additional Chief Metropolitan Magistrate and Additional Metropolitan Sessions Judge on proper appreciation of the evidence on record maintained the conviction against the Revision Petitioner. Under the circumstances, absolutely, there are no grounds to interfere with the judgment of the learned Additional Metropolitan Sessions Judge.

17. In the result, the Criminal Revision Case is dismissed confirming the judgment, dated 16.02.2010, on the file of learned I Additional Metropolitan Sessions Judge, Visakhapatnam in Criminal Appeal No.07 of 2008.

18. The Registry is directed to take steps immediately under Section 388 Cr.P.C. to certify the order of this Court to the trial Court on or before 29.02.2024 and on such certification, the trial Court shall take necessary steps to carry out the sentence imposed against the appellant/accused and to report compliance to this Court.

19. The Registry is directed to forward the record along with copy of the order to the trial Court on or before 29.02.2024.

Consequently, miscellaneous applications pending, if any, shall stand closed.

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