HIGH COURT OF ANDHRA PRADESH

Bench: Justice V. Srinivas

Date of Decision: 9th May 2024

CRIMINAL REVISION CASE NO. 208 OF 2009

MAMIDIBATTULA SUGUNA …PETITIONER

VERSUS

GANJALA PURNACHANDRA RAO AND OTHERS …RESPONDENT(S)

Legislation:

Section 138 of the Negotiable Instruments Act, 1881

Section 397 read with Section 401 of the Criminal Procedure Code, 1973

Section 357 of the Criminal Procedure Code, 1973

Subject: Criminal revision case challenging the judgment of the X Additional Sessions Judge, Krishna at Machilipatnam, which confirmed the conviction and sentence for the offence under Section 138 of the Negotiable Instruments Act by the II Additional Judicial Magistrate of First Class at Machilipatnam.

Headnotes:

Negotiable Instruments Act – Section 138 – Dishonour of Cheque – Conviction and Sentence – Criminal Revision – Petitioner issued a cheque to the complainant, which was dishonoured due to “Account Closed” – Contention that the cheque was issued as surety for a debt owed by her husband – No legally enforceable debt directly between petitioner and complainant – Trial and appellate courts found the petitioner guilty – High Court upheld the conviction and sentence, directing the petitioner to pay compensation in lieu of imprisonment. [Paras 1-25]

Issuance of Cheque – Legal Presumption – Section 139 of N.I. Act – Presumption of cheque issued for discharge of debt or liability – Burden on

accused to rebut presumption – Petitioner failed to provide credible evidence to support claim that cheque was issued as surety for husband's debt – Non-reply to statutory notice considered adverse inference. [Para 12-17]

Revisional Jurisdiction – Scope and Limitations – Revisional court should not reappreciate evidence unless findings are perverse or unreasonable – No manifest error of law or gross injustice found in lower courts' judgments – High Court declined to interfere with concurrent findings of fact. [Para 21-22]

Decision – Modification of Sentence – Conviction under Section 138 of N.I. Act upheld – Petitioner directed to pay compensation of Rs.76,000 within one month in lieu of three months' simple imprisonment – Failure to comply will result in execution of original sentence. [Para 24-25]

Referred Cases:

- ICDS Ltd. V. Beena Shabeer, (2002) 6 SCC 426
- M.S. Narayana Menon @ Mani v. State of Kerala and another, (2006) 6 SCC 39
- R. Vijayan v. Baby and Another, (2012) 1 SCC 260
- Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197
- Laxminivas Agarwal v. Andhra Semi-Conductors Pvt. Ltd., (2018) SCC Online Hyd 441

Representing Advocates:

Matada Yuvasiva Swamy for the petitioner

Public Prosecutor (AP) and Sivalenka Ramachandra Prasad for the respondents

ORDER:

Assailing the judgment dated 11.02.2009 in Crl.A.No.141 of 2007 on the file of the Court of learned X Additional Sessions Judge, Krishna at Machilipatnam, confirming the conviction and sentence imposed by the judgment dated 23.10.2007 in C.C.No.632 of 2004 on the file of the Court of learned II Additional Judicial Magistrate of First Class at Machilipatnam, for the offence under section 138 of Negotiable Instruments Act (hereinafter referred to as “N.I.Act”), the petitioner/accused filed the present criminal revision case under Section 397 r/w.401 of the Criminal Procedure Code, 1973.

2. The revision case was admitted on 12.02.2009 and the sentence of imprisonment imposed against the petitioner was suspended, *vide* orders in Crl.R.C.M.P.No.260 of 2009.

3. The shorn of necessary facts are that:

i). On 28.06.2002, the accused borrowed an amount of Rs.50,000/- for his family expenses and to discharge sundry debts from the complainant, agreed to repay the same with interest @ 24% per annum and executed a promissory note in favour of the complainant.

ii). On repeated demands, accused issued Ex.P.1 cheque bearing No.803066, dated 28.08.2004 for Rs.76,000/- drawn on Vysya Bank, Machilipatnam towards payment of promissory note debt and while giving the said cheque, she got return the said promissory note. Then the said cheque was presented for collection on 22.09.2004 but returned unpaid with an endorsement “Account Closed” under Exs.P.2 and P.3 memos.

iii). On that, the complainant got issued Ex.P.4 legal notice dated 18.10.2004 demanding the accused for payment of entire cheque amount, the same was received by him under Ex.P.5 acknowledgment, dated 26.10.2004. But did not choose to pay the cheque amount. Hence, the complaint.

4. The complaint was taken on file and numbered as C.C.No.632 of 2004 on the file of the Court of learned II Additional Judicial Magistrate of First Class at Machilipatnam and after full-fledged trial, found the accused guilty of the offence under Section 138 of N.I.Act, sentenced him to undergo simple imprisonment of three (3) months and to pay fine of Rs.2,000/-, in default to suffer simple imprisonment of one (1) month and also directed her to pay compensation of Rs.76,000/- to the complainant under Section 357 of Cr.P.C.

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5. Aggrieved by the same, the petitioner/accused preferred an appeal, *vide* Crl.A.No.141 of 2007, before the Court of learned X Additional Sessions Judge, Krishna at Machilipatnam and the same was dismissed, *vide* judgment dated 11.02.2009, by confirming the conviction and sentence passed by the trial Court.

6. Against the said judgment of the first Appellate Court, the present criminal revision case was preferred by the petitioner/accused.

7. Heard Sri M.Yuvasiva Swamy, learned counsel for the petitioner/accused and Sri S.Ramachandra Prasad, learned counsel for the 1st respondent/complainant.

8. Now the point that arises for determination in this revision is “whether there is any manifest error of law or flagrant miscarriage of justice in the findings recorded by the Trial Court as well first Appellate Court?”

9. Sri M.Yuvasiva Swamy, learned counsel for the petitioner/accused submits that complaint failed to prove the ingredients to constitute the offence alleged against the petitioner; that the testimony of P.W.1 is not reliable; that Ex.P.1 cheque was given as surety for the amount borrowed by the husband of the petitioner; that petitioner did not execute any promissory note; that both the Courts below failed to appreciate the testimony of D.Ws.1 and 2; that both the Courts below without appreciation of material on record, erroneously convicted the petitioner for the said offence and the same is liable to be set aside.

10. Sri S.Ramachandra Prasad, learned counsel for the 1st respondent/complainant submits that accused borrowed an amount of Rs.50,000/- from the complainant, executed a promissory note, in turn, on demand, issued Ex.P.1 cheque for an amount of Rs.76,000/- to discharge the said promissory note by taking the original of said promissory note, but Ex.P.1 cheque was returned unpaid; that even accused did not choose to issue any reply to Ex.P.4 notice nor to discharge the cheque amount; that the presumption can be drawn in favour of the complainant; that the Courts below properly appreciated the material on record, rightly convicted the accused for the said offence and this Court has no grounds to interfere with the concurrent findings of both the Courts below.

11. In view of the facts and contentions raised by the learned counsel on both sides, this Court closely perused the material available on record. There is no dispute about the issuance of Ex.P.1 cheque to the complaint as well dishonour of the same as unpaid.

12. The only contention raised by the petitioner/accused is that there is no legally enforceable debt between herself and complainant, she never borrowed any amount from him and she issued the said cheque as surety to the amount borrowed by her husband (D.W.2). In support of the said contention, she relied upon the testimony of herself as D.W.1 and her husband as D.W.2.

13. To prove his case, the complainant himself examined as P.W.1. He reiterated the averments made in the complaint. During cross examination, he categorically denied the money transaction between himself and D.W.2 and stated that the accused issued Ex.P.1 cheque towards discharge of legally enforceable debt. In order to prove the complainant examined himself as PW1, admittedly except testimony of P.W.1, no other oral testimony is placed on record by the complainant, however, as stated supra, accused categorically admitted issuance of Ex.P.1 cheque and receipt of Ex.P.4 statutory notice and she did not choose to give any reply.

14. Now, coming to the defence taken by the accused, she testified as D.W.1 that D.W.2, who is her husband, borrowed some money from the complainant and in respect of the same, she issued Ex.P.1 cheque to the complainant. D.W.2 also testified that he borrowed Rs.10,000/- from P.W.1 and in respect of the same, accused issued Ex.P.1 cheque as security and produced Ex.D.1 pocketbook in which P.W.1 said to be made endorsements of repayment. During cross examination D.W.2 admitted that Ex.D.1 does not disclose that it was issued by the complainant. Except the above self-interested testimony of D.Ws.1 and 2, nothing placed on record to prove her contention nor disprove the case of the complainant.

15. More so, the accused did not choose to give any reply to Ex.P.4 notice, even though she is a postgraduate and she is well aware of the consequences for issuance of cheque in favour of anyone as surety. The above said contention was raised before the trial Court for the first time. Thereby, the inference can be drawn in favour of the complainant, as such, the contention raised by the accused regarding absence of legally enforceable debt has no legs to stand.

16. The trial Court as well first Appellate Court after the evaluating the evidence placed on record held that Ex.P.1 cheque was given by the accused to P.W1 for discharge of legally enforceable debt, evidently Ex.P.4 statutory notice was issued and the same was received by her and

kept quiet and no reasons assigned for non-issuance of reply. Therefore, the facts established that the accused committed an offence under Section 138 of N.I. Act.

17. Section 139 of N.I.Act enjoins the Court to presume that the holder of the cheque received it for the discharge of any debt or liability and the burden is only on the accused to rebut the said presumption. Thereby, before the trial Court, the complaint established its case and both the Courts below rightly appreciated the material on record and found the guilt of the accused under Section 138 of N.I. Act.

18. In ***ICDS Ltd. v. Beena Shabeer***[1] the Apex Court held at paragraph Nos.11 and 12 as follows:

"11.The issue as regards the coextensive liability of the guarantor and the principal debtor, in our view, is totally out of the purview of Section 138 of the Act, neither the same calls for any discussion therein. The language of the statute depicts the intent of the lawmakers to the effect that wherever there is a default on the part of one in favour of another and in the event a cheque is issued in discharge of any debt or other liability there cannot be any restriction or embargo in the matter of application of the provisions of Section 138 of the Act. "Any cheque" and "other liability" are the two key expressions which stand as clarifying the legislative intent to bring the factual context within the ambit of the provisions of the statute. Any contra-interpretation would defeat the intent of the legislature. The High Court, it seems, got carried away by the issue of guarantee and guarantor's liability and thus has overlooked the true intent and purport of Section 138 of the Act. The judgments recorded in the order of the High Court do not have any relevance in the contextual facts and the same thus do not lend any assistance to the contentions raised by the respondents.

12.It is to be noted, however, that both the parties during the course of arguments have made elaborate submissions on Sections 126 and 128 of the Contract Act, but in our view, by reason of the specific language used by the legislature, question of consideration of the matter from the point of view of another statute would not arise, neither would we like to express any view since that may have some effect as regards the merits."

[1] **(2002) 6 SCC 426**

19. In another judgement of Hon'ble supreme Court in ***M.S.Narayana Menon @ Mani vs State of Kerala and another***[2] held that "in order to rebut presumption, the accused needed to raise probable presumption and in that process, the Court can look into evidence adduced on behalf of the complainant also to be relied upon. It is also relevant to state the expression cheque given as security is not statutorily defined in the entire Negotiable Instrument Act. The Negotiable Instruments Act per say carved out expression in respect of security, cheque to say, a complaint in respect of such cheque would not be maintainable. There can be mirage situated in which the cheque issued by way of security that has to provide an assurance or comfort to the drawee that in case of failure of the primary consideration on the due date or on the happening of contingency, the security may be enforced. Even if a blank cheque is given towards liability or even as a security, when the liability is assessed quantified, the cheque is filled up and presented to the Bank, the person who had drawn cheque cannot avoid criminal liability arising out of Section 138 of Negotiable Instrument Act."

20. In view of above settled legal principles, the defense taken by the petitioner/accused that she issued the cheque in question as a guarantee has no legs to stand.

21. It is settled law that the revisional court should not reappreciate the evidence or interfere with the findings of fact, unless they are perverse or unreasonable. This is one of the principles of criminal revision, as laid down by the Hon'ble Supreme Court of India in plethora of judgments. The revisional court should not act as a Second Appellate Court and substitute its own views for those of the Court below, unless there is a clear error of law or a gross injustice in the order or proceeding of the lower court. The revisional court should exercise its power with caution and restraint, and only in exceptional cases where there is a manifest illegality or a serious miscarriage of justice.

22. In the present case on hand, this Court does not find any such error of law or a gross injustice in the judgment or proceeding of the Courts below/Sessions Court to exercise revisional power.

23. However, seeks this court indulgence to show some lenient view in favour of the petitioner, for which the counsel for the respondent submits he has no objection if petitioner pays the cheque amount with default clause.

[2] **2006 (6) SCC page 39**

Now, coming to operation of sentence is concerned, the learned counsel for the petitioner brought to the notice of this Court a judgment of this Court in ***Laxminivas Agarwal v. Andhra Semi-Conductors Pvt. Ltd.***[3] as well judgment of Hon'ble Supreme Court reported in ***Bir Singh v. Mukesh Kumar***[4], wherein at paragraph Nos.18, 19, 28 and 29 held as follows:

19. It is well settled that in the 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.

28. In R.Vijayan vs. Baby and Another[4],this Court observed that the object of Chapter XVII of the Negotiable Instruments Act is both punitive as also compensatory and restitutive. It providesa single forum and single proceeding for enforcement of criminal liability by reason of dishonour of cheque and for enforcement of the civil liability for realization of the cheque amount, thereby obviating the need for the creditor to move two different fora for relief. This Court expressed its anguish 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 the criminal case was decided".

24. 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 N.I.Act against the petitioner. However, to meet the ends of justice, the petitioner/accused is directed to pay an amount of Rs.76,000/- (Rupees Seventy-Six Thousand Only) to the complainant towards compensation within a period of one (1) month from today, instead of simple imprisonment of three (3) months imposed by the trial Court, in default she shall undergo the sentence of imprisonment as well fine imposed as affirmed by the first Appellate Court. Accordingly, the revision petitioner is directed to appear before the Court of learned II Additional Judicial Magistrate of First Class at Machilipatnam on or before 10.06.2024, to receive the sentence of imprisonment or to pay the compensation amount as fixed by this court. In case, any failure on the

[3] (2006) 1 ALD Crl.300 (A.P.) [4](2019) 4 SCC 197
[4] (2012) 1 SCC 260

part of the revision petitioner in appearing before the trial Court as directed supra and 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 awarded against him.

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

Interim orders granted earlier if any, stand vacated. As a sequel, miscellaneous applications pending, if any, shall stand closed.

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