(2013) 07 AP CK 0069

Andhra Pradesh High Court

Case No: Criminal Revision Case No. 1227 of 2011

D. Atchyutha Reddy		APPELLANT
	Vs	
The State of A.P. and N. Rajesh Babu		RESPONDENT

Date of Decision: July 19, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 397(3)
- Negotiable Instruments Act, 1881 (NI) - Section 118, 119, 138
- Penal Code, 1860 (IPC) - Section 397(3), 420

Citation: (2013) 2 ALD(Cri) 551 : (2013) 3 ALT(Cri) 175

Hon'ble Judges: K.G. Shankar, J

Bench: Single Bench

Advocate: Rajagopallavan Tayi, for the Appellant; N. Rajesh Babu and Party-in-Person, Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.G. Shankar, J.
The petitioner, who is the sole accused in C.C. No. 34 of 2007 on the file of the VII Additional Chief Metropolitan Magistrate, Hyderabad preferred this revision assailing the judgment of the I Additional Metropolitan Sessions Judge, Hyderabad in Criminal Appeal No. 179 of 2010. The petitioner was convicted by the trial Court for the offence u/s 420 of the Indian Penal Code (IPC, for short) and was sentenced to Rigorous Imprisonment for a period of one year and a fine of Rs. 5,000/- with appropriate order of default sentence. The learned I Additional Metropolitan Sessions Judge, Hyderabad dismissed the Criminal Appeal. The case of the second respondent/de facto complainant is that the petitioner issued Ex. P.2 cheque dated 12.05.2003 with a view to cheat the second respondent and that thus the petitioner

committed cheating punishable u/s. 420 IPC.

2. The facts are not in dispute. The petitioner-accused and the second respondent-de facto complainant knew each other since quite some time. It is the case of the second respondent that the accused borrowed Rs. 5,00,000/- from the second respondent in July, 2002 on the foot of a pronote, certified copy of which is Ex. P.7. It is the further case of the second respondent that the petitioner borrowed Rs. 5,00,000/- from the second respondent in the presence of two witnesses, who attested the pronote.

3. In May, 2003, it would appear that the second respondent demanded for return of the money borrowed by the petitioner. The petitioner, consequently, issued a cheque on 12.05.2003, the certified copy of which is Ex. P.2. When the second respondent presented the same for encashment in his bank on 10.06.2003, the cheque was returned on 11.06.2003 under Ex. P.3-endorsement that the account was closed. Hence, the case that the petitioner cheated the second respondent.

4. Admittedly, the second respondent filed a separate complaint against the petitioner u/s 138 of Negotiable Instruments Act, 1881 (the N.I. Act, for short). The case is pending before the concerned Court. Again, the second respondent filed O.S. No. 1135 of 2005 on the file of the learned VIII Additional Chief Judge, City Civil Courts, Hyderabad seeking for recovery of the amount covered by the pronote. Apart from a complaint u/s. 138 of N.I. Act and a suit for recovery of the money, the second respondent laid the present complaint seeking that the petitioner resorted to cheating punishable u/s. 420 IPC.

5. It is the case of the petitioner that the father of the second respondent took blank cheques duly signed by the petitioner as security, as there are many transactions between the petitioner on the one side and the second respondent and his father on the other side. The petitioner, however, admitted that he had to close down the account after issuance of the cheques.

6. It is the contention of Sri B. Vijaysena Reddy, learned counsel for the petitioner that when the accused had the account by the time he issued the cheque, subsequent closure of the account after issuance of the cheque cannot be treated as an incidence of cheating on the part of the petitioner. He pointed out that the second respondent must show that the petitioner had the requisite mens rea to cheat the second respondent right from the inspection, i.e. from the time of issuance of the cheque by the petitioner to establish the offence u/s. 420 IPC against the petitioner. The learned counsel for the petitioner also pointed out that the presumptions under Sections 118 and 119 of N.I. Act do not have any role in respect of the offence u/s. 420 IPC and that the second respondent should prove his case beyond reasonable doubt notwithstanding Sec. 118 and 119 of N.I. Act presumptions.

7. The first contention of the learned counsel for the petitioner is that when the petitioner had live account by the time he issued the cheque, subsequent closure of the account is not tantamount to cheating. Although the prosecution examined as many as four witnesses including the second respondent as PW. 1, it is not established that the petitioner has guilty mind by the time he issued the cheque. If the petitioner had issued the cheque after he closed the account, it can certainly be considered that the petitioner issued the cheque with a view to cheat the second respondent. When the account was in operation by the time the cheque was issued, perhaps the petitioner later developed an idea to dupe the second respondent and perhaps he closed the account with a view to cheat the second respondent. However, they do not constitute an offence in this case where the alleged cheating is at the time of the issuance of cheque and not later. No evidence is forthcoming from the prosecution to show that the petitioner had guilty mind at the time of the issuance of the cheque to convict the petitioner for the offence u/s. 420 IPC.

8. It is the contention of the learned counsel for the petitioner that the presumptions u/s. 118 & 119 of the N.I. Act do not apply to the case and that the onus is upon the prosecution to prove the guilt of the petitioner beyond reasonable doubt. Indeed, this is not a case under the provisions of the N.I. Act. The petitioner allegedly committed the offence under the Indian Penal Code. I have no hesitation to hold that the prosecution failed to prove the guilt of the accused beyond reasonable doubt for the reasons already set out above. The finding of the trial Court and the appellate Court that the accused is guilty, therefore, is liable to be set aside.

9. However, the second respondent as party-in-person raised a legal question. The second respondent contended that the petitioner earlier filed a revision in Crl. R.C. No. 880 of 2011 and subsequently withdrew the same. It is the contention of the second respondent that Section 397(3) Cr.P.C. prohibits filing of a second revision by the same person if such a person had filed a revision earlier.

10. Admittedly, the petitioner herein filed Crl. R.C. No. 880 of 2011. On 29.04.2011, the revision was dismissed as withdrawn on the representation of the learned counsel in that case. It is contended by the learned counsel for the petitioner herein that withdrawal of a revision cannot be treated as filing of an earlier case.

He further contended that there is no provision for withdrawal of a revision and that the very order of the Court dated 29.04.2011 is non est, so much so, the revision is maintainable. His contention in this context is that the bar u/s. 397(3) Cr.P.C. applies only when the former revision was disposed of on merits.

11. In Mohammad Khan Hanif Khan Vs. Shamim Begum and Another, the Allahabad High Court observed that if a revision laid before the Sessions Court is dismissed as not pressed, a subsequent application to the High Court is not maintainable. The present case exactly is on similar facts. In the present case, the petition laid a

revision before the High Court and withdrew it subsequently. I am afraid that once a revision is filed, whether it is disposed of on merits or otherwise, a new revision is barred by Section 397(3) Cr.P.C. The point for consideration in this case is whether Sec. 397(3) Cr.P.C. applies even if the former revision was disposed of as withdrawn or dismissed for default in contradistinction to disposal on merits. I consider that so long as a former revision is filed, whether the same is pending or disposed of and whether the same is disposed of on merits or otherwise, the prohibition u/s. 397(3) Cr.P.C. holds good. Consequently, the revision is not maintainable in view of Sec. 397(3) Cr.P.C.

12. The second respondent, who is party-in-person, conducted the case himself and cited several decisions in support of his contention that a second revision is prohibited by Sec. 397(3) Cr.P.C. I deem it appropriate not to refer those cases where I agree with this contention and where I read Section 397(3) Cr.P.C. as prohibiting filing of the second revision when the first revision was disposed of on merits or otherwise. The petitioner has established that the prosecution failed to prove the guilt of the accused beyond reasonable doubt for the offence u/s. 420 IPC. However, where the revision is not maintainable in view of the bar u/s. 397(3) Cr.P.C. This revision is found not meritorious on technical grounds and is accordingly dismissed.