HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL APPEAL No.752 OF 2006

JUDGMENT:

In this appeal, challenge is to the order of acquittal dated 17.09.2003 in C.C.No.777 of 2000 on the file of XXIII Metropolitan Magistrate, Hyderabad, whereby and whereunder while dismissing the complaint for the offence punishable under Section 138 of Negotiable Instruments Act, 1989(for short 'the Act') recorded acquittal of the respondents herein under Section 255(1) of Criminal Procedure Code, 1973.

The facts in nutshell are that respondents 1 and 2, who are husband and wife approached the appellant somewhere in the month of July 1995 and on their request, a sum of Rs.50,000/- was advanced as loan for their business and family necessities as against Rs.1.00 lakh and in token thereof, respondents jointly executed a pronote in favour of the appellant agreeing to repay the same with interest at 24% per annum. Thereafter the complainant also gave an amount of Rs.50,000/- on 27.10.1995 through a cheque bearing No.062 634 dated 27.10.1995 drawn on Andhra Bank, Ameerpet. On encashment, both the respondents executed a letter of pronote on the same day agreeing to repay the same on demand with interest at 24% per annum. Later, on demands, the first respondent said to have paid an amount of Rs.1,000/- on 15.06.1998 and another Rs.1,000/- on 17.09.1998, and, thus, both the pronotes were renewed but they stood undischarged. On being reminded, the respondents approached the appellant and amicably settled the due amount agreeing to pay an amount of Rs.2.00 lakhs towards full and final settlement and issued two cheques bearing Nos.885326 and 885329 dated 26.08.2000, for Rs.1.00 lakh each drawn on Syndicate Bank. When the appellant presented the said cheques through his banker Andhra Bank, the same were dishonoured by the banker of the respondents vide memo dated 30.08.2000, with an endorsement 'account does not exist'. The appellant, therefore, got issued legal notice dated 06.09.2000, demanding the respondents to pay the amount covered by the cheques within 15 days from the date of receipt of notice, but the said notice was returned with an endorsement that the flat number was not there in the apartment and it is stated that the respondents some how, got managed to return the said notice with an incorrect endorsement. Hence the complaint was laid levelling the offence punishable under Section 138 of the Act and under Section 420 IPC seeking prosecution.

Before the learned Magistrate, to substantiate their respective cases, the appellant examined himself as P.W.1 and one B.H.Maheswar, Bank Manager as P.W.2 and exhibited Exs.P1 to P14, and on behalf of the respondents, Ex.D1 which is Form-A which consists of partnership deed issued by the Registrar of Firms, was marked.

The Court below recorded the finding that the complaint was filed within time and the legal notice was got issued within 15 days as per the legal requirement while examining the stand of the respondents as canvassed by the learned counsel. The court below made a probe into whether there is any legal liability on the part of the respondents towards legally enforceable debt or any other liability and placed reliance on a decision of this Court in M/s. Baba Finance Corporation Vs. Mohd.Nayeem and another and basing on the admission made by P.W.1 in his cross-examination, the appellant herein, which is a partnership concern did not obtain any licence for dealing in money lending business under Telangana Money Lenders Act and held that the complaint was not maintainable, though, referring to the presumption enacted by the provisions of Section 139 of the Act. Consequently, the respondents were acquitted by the court below under Section 255(1) Cr.P.C.

The above said order recording the acquittal of the respondents is under challenge in the instant appeal preferred by the complainant contending the grounds that the court below was not right in holding that the liability was not towards legally enforceable debt. It is also contended that the burden is on the respondents to prove that the complainant was a money lender and the transaction was a loan as defined in A.P./Telangana Area Money Lenders Act and since the respondents failed to prove the same by entering into the witness box ought to have observed that the provisions of the Money Lenders Act have no application to the facts of the case.

It is also stated that when once the issuance of cheque was not denied, the presumption under Section 139 of the Act would automatically arise in favour of the holder in due course indicating that there is a legally enforceable debt and the Court below, therefore, ought to have held that the debt is a legally enforceable debt. It is also stated that the court below, some how, over looked the fact that the word ‘suit’ occurring in sub-section 2 of Section 9 of A.P. (Telangana Area) Money Lenders Act does not include criminal proceedings and ought not to have relied on the provisions of the said Act. It is also stated that the acquittal ought not to have been recorded by the Court below by placing reliance on the judgment of the Hon’ble Apex Court in Baba Finance Corporation Vs.Mohd. Nayeem and others, since the said judgment is per *incurium,* in view of the subsequent judgments of the Hon’ble Apex Court, and, therefore, sought to set aside the judgment of the Court below.

Heard Sri K.Chidambaram, learned counsel for the appellant and Sri A.Hariprasad Reddy, learned counsel for the second respondent. Perused the judgment and the evidence on record let in by both sides.

During the course of arguments, the learned counsel for the appellant has fairly conceded that the judgment of the Apex Court reported in *K.N.BEENA v. MUNIYAPPAN AND ANOTHER* would not assist the case of the appellant so far as the legal principle laid down by this Court in Mohd.Nayeem's case(1 supra) is concerned.

The observations of this Court contained in para – 6 in Mohd. Nayeem's case since relevant, it would be appropriate to refer to the same which are thus:

> "Section 9, clause (1) and (2) of the said Act provide as under:
>
> 1. The Court shall frame and decide the issues whether the money-lender is a money-lender as defined in sub-section (7) of Section 2, and whether he has complied with the provisions of (Section 3) and of clauses (a) and (b) of sub-section (1) of Section 5 and sub-section (1) and (2) of Section 6.
>
> 2. If it is proved that the plaintiff is a money-lender as defined in sub-section (7) of Section 2, but does not hold a licence granted under Section 3, the Court shall dismiss his suit.
>
> From clause (2) of Section 9 extracted above,if it is proved that the plaintiff is a money-lender as defined under the Act and if he does not possess licence in question, the Court shall dismiss his suit. In other words, such a money lender cannot claim debt or liability from others, from his debtors without valid money lending licence. Explanation to Section 138 of the Negotiable Instruments Act, further, provides that the dishonoured cheque shall relate to a debt or liability enforceable in order to constitute an offence. From the evidence on record it is revealed that the dishonoured cheque was issued regarding a loan alleged to have been taken from the complainant. But the complainant as a money lender cannot enforce such a debt or liability without obtaining a licence under Section 3 of the said Money-lenders Act. In the instant case, P.W.1, admits that he has not produced any money lenders licence and they are doing money lending business. In this view of the matter, on the basis of a complaint filed by such a money lender without any licence, the offence cannot be taken cognizance of. Since the alleged dishonoured cheque pertaining to a debt is not enforceable. Therefore, the point one is rightly considered by the Court below."

This Court held that the proceedings under Section 138 read with 142 of the Act are quasi civil and quasi criminal in nature in B.Mohan Krishna and Others Vs. Union of India and others and Section 3 of the Andhra Pradesh (Telangana Area) Money Lenders Act, 1349 Fasli mandates that the money lenders shall necessarily get their names registered and on such registration a money lenders licence would be issued under sub-section (2) of Section 3 in the prescribed form and such a licence under sub-section(4) would be valid for one year from the date of issue and Section 3 sub-section (v) of the said Act makes it clear that any money lender shall not carry on the business of money lending without obtaining licence and if he contravenes the same, he would be liable for rigorous imprisonment up to six months or with fine or both and offence under this section is also made cognizable and bailable.

It is clear from the judgment and material on record that there has been a categorical admission made by P.W.1 that the appellant did not possess licence for doing money lending business under Telangana Money Lenders Act. Even during the course of arguments, the admission made by P.W.1 was not disputed by learned counsel for the appellant nor any attempt is made to explain it away. The very fact that the appellant has not chosen to file and exhibit the money lending licence which business is dealt with by the appellant as a partnership firm by virtue of Ex.P12 partnership deed and Ex.P14 partnership deed, the order of acquittal recorded by the court below placing reliance on the judgment of this Court in Mohd. Nayeem's case (supra-1) does not suffer from any legal infirmity warranting interference. The learned Magistrate has in fact extracted the relevant portion in paragraph 12 of the said judgment. So, the finding recorded by the court below that the liability is not towards legally enforceable debt, since, well reasoned and well appreciated cannot be construed as perverse warranting interference.

Hence, the appeal is liable to be dismissed and accordingly dismissed confirming the judgment of the court below.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

March 13, 2015.

Rns