

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL NO.929 OF 2008

JUDGMENT:

This appeal is preferred by the complainant challenging the judgment of the Additional Metropolitan Sessions Judge for trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge at Hyderabad dated 8.4.2008 whereby the learned Sessions Judge allowed CrI.A.No.475 of 2007 and set aside the judgment of IX Additional Chief Metropolitan Magistrate at Hyderabad dated 26.11.2007 in C.C.No.131 of 2002 convicting the accused for the offence under Section 138 of Negotiable Instruments Act and sentencing him to undergo R.I. for six months and to pay a fine of Rs.3,000/-, in default, to undergo S.I. for ten days.

The case of the complainant is that the complainant and the accused are Chartered Accountants by profession and they were carrying the practice since 1984. In 1991, one Chandra Mouli was inducted as a partner of the firm to look after the work at Nellore under the firm's name particularly, the work of A.P.Transco. Later on, certain disputes arose between the complainant and the accused and they decided to share their work. Accordingly, the complainant was given the work of A.P.Transco at Himayathnagar office and the accused was allotted the work of corporate sectors and other individual works. Subsequently, on 2.5.2001, the complainant and the accused entered into a Memorandum of Understanding ('MOU') with certain terms and conditions. On

8.5.2001, the accused had sent a letter to A.P.Transco that the complainant shall look after the A.P.Transco work and he is authorised to submit the bills. On 15.5.2001 as per the MOU, the accused was to pay an amount of Rs.2,50,000/- and he issued two cheques dated 15.5.2001 for Rs.1,36,153/- and Rs.91,700/- drawn on Indian Bank, Himayathnagar Branch, Hyderabad. The said amount was received by the accused subsequent to the entering into MOU for the work done by the complainant prior to MOU, for which the accused issued above two cheques. When the cheques were presented for collection on 12.11.2001, both the cheques were returned on the ground of "Stop Payment". Immediately, the complainant got issued legal notice dated 24.11.2001 with a demand to pay the amount covered by the cheques. The accused issued a reply with false allegations and hence, the complaint for the offence under Section 138 of Negotiable Instruments Act.

In order to prove his case, the complainant got himself examined as P.W.1 and marked Exs.P.1 to P.10. On behalf of accused, Exs.D.1 to D.3 were marked.

The trial Court on evaluation of evidence brought on record held that the cheques Exs.P.2 and P.3 were given by the accused in discharge of due liability and that he has not placed any cogent evidence to rebut the presumption that those cheques were not issued for liability and holding so, convicted and sentenced the accused as aforementioned. On appeal preferred by the accused, the lower appellate Court held that that there is no legally enforceable debt to be enforced against the accused and

accordingly allowed the appeal reversing the findings of the trial Court. At para 13, the lower appellate Court observed as under:

“13.....Thus when the complainant himself disputed the dissolution and still claims to be a partner in the firm his presenting Exs.P.2 and P.3 subsequent to issuing Ex.D.1 letter and later issuing notice for enforcement of the debt against the accused cannot stand for any reasoning. Hence under these circumstances it is manifest that there is no legally enforceable debt to be enforced against the accused and hence under these circumstances this point is to be answered against the complainant and hence accordingly this point is answered in favour of the accused and against the complainant.”

Heard the learned counsel for the appellant-complainant and learned counsel for the first respondent-accused. Perused the material available on record.

As seen from Ex.D.1 letter dated 14.9.2001 written by the complainant, the partnership firm was in existence in the month of September, 2001 and he informed his intention not to dissolve the partnership firm. The MOU marked as Ex.P.1 dated 2.5.2001 became infructuous in nature and the same cannot be acted upon. As per Ex.P.1 there is an understanding between the parties to dissolve the partnership firm and it also speaks about the amounts for which the cheques are given whereby a legally enforceable debt is created. But however, subsequently, the letter-Ex.D.1 dated 14.9.2001 addressed by the complainant is contrary to the contents of the said MOU. The letter-Ex.D.1 dated 14.9.2001 is not disputed by the complainant. When the complainant himself is not intended to dissolve the partnership firm, whatever the terms and conditions that were imposed in the MOU dated 2.5.2001 to be construed as not in existence. Further the complainant failed to mark a copy of partnership deed to

substantiate what are the terms and conditions set forth thereunder. The complainant wants to rely on the certified copy of the MOU dated 2.5.2001 and whereas, the accused wants to rely on the letter-Ex.D.1 addressed by the complainant dated 14.9.2001. The contents in both the documents are totally contrary in nature. It is true for an offence under Section 138 of Negotiable Instruments Act, always presumption is in favour of the complainant. But at the same time, the accused has a right to rebut the said presumption. In the present case, the appellate Court is of the view that in view of the two contrary views available on record, it has taken the view that is in favour of the accused and accordingly, acquitted him of the charge. Hence, this Court is of the view that there is no illegality to interfere with the order of acquittal recorded by the lower appellate Court and the appeal is liable to be dismissed.

In the result, the appeal is dismissed confirming the judgment of the Additional Metropolitan Sessions Judge for trial of Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge at Hyderabad dated 8.4.2008 in CrI.A.No.475 of 2007.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

29th AUGUST, 2016

Tsr

