

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1586 OF 2007

JUDGMENT:

This criminal appeal is preferred by the appellant/complainant by invoking the provision under Section 378(4) of the Code of Criminal Procedure being aggrieved by the judgment, dated 30.08.2007, rendered in C.C.No.634 of 2004, by the II Additional Chief Metropolitan Magistrate, at Hyderabad, whereby and whereunder the learned Magistrate found the respondents 1 & 2/A-1 & A-2 not guilty of the offence under Section 138 of the Negotiable Instruments Act (for short, 'the Act') and accordingly, acquitted them for the said offence.

2. The brief facts, that are necessary for the disposal of the present Criminal Appeal, may be stated as follows:

The complainant and A-2 are acquainted with each other and A-2, who is Managing Director of A-1 company, borrowed an amount of Rs.6,00,000/- from the complainant as a hand loan on 10.01.2004 for the purpose of construction business of A-1 company with a promise to repay the hand loan amount within two months and to discharge said liability, A-2, Managing Director of A-1 company issued a cheque bearing No.052376, dated 15.03.2004, for Rs.6,00,000/- drawn on Lord Krishna Bank Ltd., Somajiguda, Hyderabad. The complainant presented the said cheque for realization through his bankers i.e., UCO Bank, Koti Branch, Hyderabad, and the said cheque was returned dishonoured for the reason "Payment stopped by the drawer" vide bank return memo, dated 23.03.2004. Then, the complainant issued legal notice on 12.04.2004 and in spite of receipt of legal notice on 15.04.2004, the accused failed to make payment covered

under the said cheque and therefore, the accused were liable for the offence punishable under Section 138 of the Act.

3. The case was taken cognizance for the offence punishable under Section 138 of the Act against the accused.

4. On appearance of the accused before the Court, the accused were examined under Section 251 Cr.P.C. for the offence under Section 138 of the Act, for which they denied the offence, pleaded not guilty and claimed for trial.

5. To prove its case, the complainant himself examined as P.W.1 and got marked Exs.P-1 to P-7. On behalf of the defence, A-2 examined himself as D.W.1 and Exs.D-1 to D-4 were marked.

6. After evaluating the oral and documentary evidence adduced by the prosecution witnesses, the trial Court found the accused not guilty of the offence under Section 138 of the Act and accordingly acquitted them. Aggrieved by the same, the appellant/complainant preferred the present appeal.

7. Heard the learned counsel for the appellant, the learned Public Prosecutor for the 3rd respondent and the learned counsel for respondents 1 & 2/A-1 & A-2 and perused the material available on record.

8. The very short point for consideration is that the said complaint was dismissed by the trial Court on the ground that on the date of presentation of the cheque, sufficient fund was available in the bank of the accused and as per the evidence of D.W.1 – Krishna Prasad, who is the Assistant Bank Manager of Lord Krishna Bank, Somajiguda, the Bank on which Ex.P-1 cheque was drawn established that as on the date of 02.03.2004, the accused was having secured overdraft facility to the extent of Rs.1,60,00,000/- and as on 20.03.2004, the accused company was

having Rs.31,00,000/- and D.W.1 further deposed that there was sufficient amount to honour Ex.P-1 cheque as on 23.03.2004, but as they received Ex.D-3 stop payment letter from A-2, they have not honoured Ex.P-1 cheque. It was further observed by the trial Court that the evidence of D.W.1 establishes that A-2 has given stop payment letter to the bank for not honouring Ex.P-1 cheque and the said letter probablises the case of the defence that as the complainant failed to supply the material as per the agreement towards which Ex.P-1 was given as advance, they asked for not honouring the cheque. Hence, this Court is of the view that once it is proved by the accused that sufficient funds were available in the bank and the said cheque was returned only on the ground that there was some dispute between the parties concerned, no offence under Section 138 of the Act is made out. Hence, the findings of the learned trial Judge are in accordance with law and the judgment of the trial Court does not suffer with any perversity or illegality, necessitating interference by this Court, and the trial Court correctly appreciated the evidence and acquitted the accused under Section 255(1) Cr.P.C. for the offence under Section 138 of the Act and hence, the appeal is liable to be dismissed.

9. Accordingly, the Criminal Appeal is dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed.

RAJA ELANGO, J

Date: 9th September, 2016

KL

HONOURABLE SRI JUSTICE RAJA ELANGO



CRIMINAL APPEAL No.1586 OF 2007

Date: 9th September, 2016

KL