

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No:702 OF 2006

JUDGMENT:

1. This appeal is filed by the complainant against the judgment dated 27.1.2006 passed in STC No.145 of 2005 by the Special Judicial Magistrate of First Class for Excise, Chittoor,

2. The case of the complainant is as follows:

The 1st respondent-accused borrowed a sum of Rs.1,25,000/- from him for his family necessities and for discharge of debts. On demand for repayment, the accused issued a cheque dated 20.9.2004 to the complainant. When the complainant presented the same for collection, the same was returned and dishonored. Then, a legal notice was issued to the accused. But he did not choose to pay any amount. Hence, the complainant filed a complaint for the offence under Section 138 of the Negotiable Instruments Act.

3. The learned Magistrate examined the accused under Section 251 Cr.P.C. The accused pleaded not guilty and claimed to be tried.

4. During the course of trial, the complainant examined himself as P.W.1 and got Exs.P1 to P5 marked on his behalf. D.Ws.1 to 3 were examined and Exs.D1 was marked on behalf of the accused.

5. On appreciation of oral and documentary evidence, the trial Court found the accused not guilty for the offence under Section 138 of the Negotiable Instruments Act, acquitted him. Aggrieved by the same, the complainant filed this appeal.

6. Learned Counsel for the appellant submitted that even according to the accused, there are money transactions between the complainant and the family of the accused and that the trial Court has failed to appreciate the evidence of the complainant in a proper perspective.

7. The trial Court after evaluating the evidence on record, acquitted the accused on the following grounds:

- 1) The complaint does not disclose the fact the year, month, date and time on which the said amount of Rs.1,25,000/- was given to the accused;
- 2) The accused had not received anything in support of the said cheque;
- 3) The accused rebutted the presumption by way of examining himself and also two other witnesses. The said witnesses deposed before the Court that the son-in-law of the accused borrowed Rs.25,000/- from the complainant. As the respondent-accused has been working as an attender in the Government Hospital, the complainant requested him to execute a cheque in his favour as security purpose.
- 4) D.W.2, who is a common friend of the accused and the complainant deposed specifically that he was present at the time of handing over the said amount of Rs.25,000/- to the son-in-law of the accused and execution of the cheque by the accused in favour of the complainant.
- 5) The evidence of D.Ws.1 to 3 was not rebutted by the appellant.

8. Considering the findings of the trial Court, this Court is of the view that since there is a doubt as to the execution of the cheque in favour of the appellant for legally enforceable doubt, the trial Court acquitted the accused. The judgment of the trial Court does not suffer from any irregularity or illegality warranting interference by this Court.

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

Dated: 23.9.2016
Nn

JUSTICE RAJA ELANGO



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