THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CRL.A.NO.1145 OF 2016

JUDGMENT

The appellant/complainant being aggrieved by the judgment dated 14.6.2016 passed by the court of Judicial First Class Magistrate – cum – Principal Junior Civil Judge, Gudivada in C.C.No.357 of 2013, filed the present appeal, whereby the trial court dismissed his complaint under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act').

On a perusal of the impugned judgment, the trial court has recorded that the appellant/complainant failed to prove from oral and the documentary proof of Exs.P-1 and P-2 that prima facie there is legally enforceable debt between the accused and the complainant, because the appellant/complainant did not file any bank statement to the loan amount lent by him in the form of cheque to the accused. Though P.W.1 stated that he is ready to file bank statement, did not file the same to prove the loan transactions between him and the accused under Exs.P-1 and P-2, which are filed by the complainant to show that the accused has borrowed the amounts mentioned in those documents from him. The trial court found that Exs.P-1 and P-2 transactions are not corroborated to the case of complainant and to his evidence due to material contradictions as there are two different versions from the case of complainant and Exs.P-1 and P-2.

Accordingly, the trial court found that the appellant/complainant has failed to establish his case and the accused has rebutted the presumptions of Sections 138 and 118 of the Act, which provides that until the contrary is proved, presumption shall be made as to the date shown on the instrument. However, the appellant/complainant stated two different versions that the accused borrowed on different dates, but whereas Exs.P-1 and P-2 does not reflect the same. Contrary to that it shows that on the date of execution of Ex.P-1, the accused has borrowed Rs.1,00,000/- which is one transaction and in Ex.P-2 the accused borrowed Rs.2,50,000/- on 7.2.2011, which is single transaction.

Moreover the attestors of Exs.P-1 and P-2 are also not examined. The appellant/complainant failed to prove that the amounts were lent by him from his account to the accused and also failed to establish that there is any legally enforceable debt. Therefore, the appellant/complainant failed to prove the material transactions of lending amount to the accused and that to discharge the amount, accused has issued Ex.P-4 cheque. The trial court found that even though the appellant/complainant fulfilled other negotiations of Section 138 of Act by issuing the legal notice about non-payment of Ex.P-4, failed to prove the loan transactions existing between him and the accused.

In view of the above discussions, I do not find any discrepancy in the order passed by the court below

Accordingly finding no merit in the instant appeal, the same is dismissed.

SURESH KUMAR KAIT,J

DATE: 29—11—2016
AVS