

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1032 of 2006

JUDGMENT:

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1. This Criminal appeal is filed by the appellant-complainant challenging the judgment dated 8.5.2006 passed in C.C.No.882 of 2004 by the III Additional Chief Metropolitan Magistrate, Vijayawada.

2. The case of the complainant is as follows:

The complainant filed the complaint in above C.C.No.882 of 2004 against respondents 1 and 2-A1 and A2 for the offence under Section 138 of the Negotiable Instruments Act. It is stated that A1 is the husband of A2. Both of them borrowed a sum of Rs.90,000/- from the complainant on 26.4.2002 for their family expenses and executed a promissory note in his favour. In spite of repeated demands, A1 issued a cheque bearing No. NSTI-602635, dated 14.11.2003 and A2 issued a cheque bearing No.NSSD 683527 for Rs.30,000/- drawn on Canara Bank, Madhuranagar, Vijayawada, towards part satisfaction of the said promissory debt. When the said cheques were presented, the same were dishonoured with an endorsement 'payment stopped by drawer'. Even though the complainant got issued a notice dated 23.1.2004, the accused did not repay any amount.

3. When the trial Court examined the accused under Section 251 Cr.P.C., for the offence under Section 138 of the Negotiable Instruments Act, they pleaded not guilty and claimed to be tried.

4. During the course of trial, no oral or documentary evidence was adduced either on behalf of the complainant or on behalf of the accused. The trial Court acquitted the accused. Aggrieved by the same, the complainant filed this appeal.

5. Learned Counsel for the appellant submitted that the trial Court

has not given sufficient opportunity to prove the case of the appellant-complainant and the trial Court has not considered the material in a proper perspective and that the trial Court acquitted the accused without giving any sufficient reasons.

6. In the judgment under appeal, the trial Court observed as follows:

“On perusal of the docket sheet of the case, it is evident that though this Court has allowed CrI.M.P.No.363/2006 by imposing costs of Rs.500/- to the complainant to produce complainant's side evidence, but in spite of that, the complainant failed to produce any evidence. So, it is clear that the complainant has filed this case only to harass the accused and the complainant has no interest to prosecute the accused for further evidence.”

7. The trial Court dismissed the complaint on the ground that the complainant failed to comply with the condition imposed by the trial Court. The reasons stated by the trial Court for dismissal of the complaint are not sustainable. When the complainant failed to comply with any conditions, the trial Court should not have passed the judgment as stated above, without giving sufficient opportunity to the complainant. Therefore, this Court is of the view that one more opportunity should be given to the complainant to adduce evidence.

8. In the circumstances and in view of the submission made by the learned Counsel for the appellant that no sufficient opportunity was given to the complainant, the judgment under appeal is set aside and the matter is remanded to the Court concerned to issue notice to the parties concerned and conduct a fair trial and pass appropriate orders, in accordance with law.

9. With the above directions, the Criminal Appeal is allowed.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated: 22nd July, 2016
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