THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1338 OF 2007

JUDGMENT:

1. This Criminal Appeal is preferred by the complainant challenging the judgment of the IX Additional District & Sessions Judge (Fast Track Court), Guntur dated 29.06.2006 in Crl.A.No.86 of 2003, whereby the learned Judge allowed the appeal and acquitted the accused of the offence under Section 138 of Negotiable Instruments Act ('N.I. Act') by setting aside the judgment of the Judicial First Class Magistrate for Excise, Guntur in C.C.No.230 of 2002 dated 29.6.2006, whereunder the 1st respondent was convicted for the offence under Section 138 of N.I. Act and sentenced to suffer Simple Imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to suffer Simple Imprisonment for one month.

2. The facts of the case are that the accused-P.Rambabu, who is the Managing Partner of Sri Kanaka Durga Fertilizers & General Merchants purchased pesticides from the complainant firm i.e. United Phosphorus Limited on credit basis by opening an account (Khata), and for discharge of the debt due under that account, he issued a cheque dated 23.2.2000 drawn on Indian Bank, Chalapalli for Rs.5,00,936.65 ps. When the said cheque was presented with the bank for collection, it was returned on 18.4.2000, with an endorsement 'insufficient funds'. The complainant after issuing the statutory notice, lodged the complaint against the accused for the offence under Section 138 of N.I. Act.

3. In order to prove its case, the complainant examined P.Ws.1 to 3 and got marked Exs.P.1 to P.8. On behalf of accused, D.W.1 was examined.

4. Considering the evidence of P.Ws.1 to 3 coupled with Exs.P.1 to P.7, the trial Court held that the complainant established that the accused had given Ex.P.1 cheque towards discharge of debt under Ex.P.7-khata, that it was dishonoured due to insufficient funds and that though the statutory notice under Ex.P.4 was issued, the accused evaded to receive the same and failed to pay the amount and thus, he committed the offence under Section 138 of Negotiable Instruments Act and accordingly, convicted him and sentenced him to suffer Simple imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to suffer Simple imprisonment for one month. Aggrieved by the same, the accused filed appeal viz., Crl.A.No.86 of 2003 before the IX Additional District & Sessions Judge (FTC), Guntur. The lower appellate Court allowed the appeal reversing the finding of the trial Court and acquitted the accused for the charge under Section 138 of the Negotiable Instruments Act, while holding that the complainant failed to fulfil the ingredients to constitute an offence under Section 138 of N.I. Act. Hence, the complainant filed this appeal.

5. Heard and perused the material available on record.

6. The reasons given by the lower appellate Court for reversing the findings of the trial Court are as follows:

> " The oral evidence of P.W.1 coupled with Ex.P5 office copy of the legal notice reveals that the first respondent herein

issued notice to the appellant revealing the bouncing of cheque due to the insufficient funds in the account of the appellant by giving 15 days time to return the cheque amount. Even though the evidence of P.W.1 coupled with endorsement date on Ex.P5 office copy of the legal notice reveals that the first respondent herein issued legal notice on 29.04.2000, Ex.P4 postal receipt stamp on the backside of the receipt reveals that the first respondent herein sent registered notice on 2nd. Ex.P6 returned registered notice endorsement also reveals that the first respondent herein sent registered notice on 2/5 with number 3611 Ab. If it is so, the first respondent herein issued legal notice to the appellant herein after 15 days after receipt of the Ex.P3 and P4, revealing the bouncing of cheque.

The said legal notice was returned unserved by stating not found. On 24.05.2000 the first respondent herein presented the private complaint. Ex.P.6 registered notice is returned on 05.05.2000. In Pawan Kumar Vs. Shakuntala 1998(1) CCR 111 it is held that "Notice was duly given but the same was returned unserved with postal endorsement 'not found'. If a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. Under these circumstances notice from the addressee can be treated to have been served on him on 05.05.2000. After waiting 15 days from 05.05.2000 and within one month from 05.05.2000 i.e. on 24.05.2000, the first respondent herein presented the private complaint. There is no recorded proof before this Court that the appellant herein paid cheque amount within stipulated time. P.W.1 admitted in his cross-examination that Ex.P.1 is presented for collection twice. The second respondent herein failed to clarify that whether he issued legal notice to appellant herein demanding to repay the cheque amount when he first time presented the Ex.P.1 cheque for collection as the period of limitation starts from the issue of legal notice to appellant. Second respondent failed to prove beyond reasonable doubt when the period of limitation started as he admitted in his cross that he presented the cheque twice in the Bank. To

constitute an offence under Section 138 of Negotiable Instruments Act all the ingredients should fulfil. As such the first respondent herein failed to prove the guilt of the appellant for the offence u/sec. 138 of Negotiable Instruments Act beyond reasonable doubt. Hence benefit of doubt is given to the appellant."

7. From the material available on record, it is obvious that the cheque in question was issued on 23.2.2000. It is well settled that a holder of the cheque can present it number of times within the period of its validity. However, the ingredients of Section 138 of the Negotiable Instruments Act as to the cause of action and limitation should not be lost sight. In the present case, P.W.1 in his cross-examination admitted that he presented the cheque in the bank for collection twice. But it was not stated in the complaint. Further, P.W.1 did not state as to the dates when the cheque was presented twice and further, he did not state as to whether the endorsement dated 18.4.2000 is the first endorsement or the second one and as to whether notices were issued by the complainant on such two occasions. There are no specific details as to the cause of action and the starting of limitation period. Thus, the complainant failed to show as to when the cause of action arose and when the limitation started as rightly observed by the lower appellate Court in view of the admission made by P.W.1 in his cross-examination as to the presentation of cheque in question twice.

8. Further, after perusing the material available on record, it is obvious that the particulars given by the complainant as to the issuance notice and its return are not clear as rightly observed by the lower appellate Court in the judgment challenged herein. The

suppression of facts as to the presentation of the cheque in question twice in the complaint leads to draw an interference that the complainant failed to prove the ingredients of Section 138 of the Negotiable Instruments Act. In the circumstances, the lower appellate Court extended benefit of doubt to the accused.

9. In view of the foregoing discussion, this Court is of the view that the judgment under challenge does not warrant any interference by this Court.

10. Accordingly, the Criminal Appeal is dismissed confirming the judgment dated 29.6.2006 passed in Crl.A.No.86 of 2003 by the IX Additional District and Sessions Judge, Guntur, Guntur District. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Justice Raja Elango

Dated: 29.8.2016
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Tsr/Nn