

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1311 OF 2007

JUDGMENT:

This Criminal Appeal, under Section 378(4) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is filed by the complainant against the judgment, dated 21.6.2007, in C.C.No.832 of 2006 on the file of the Judicial Magistrate of First Class, Bhadrachalam whereunder and whereby, the private complaint filed by the complainant was dismissed and respondent No.1/accused was acquitted under Section 255(1) Cr.P.C. for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The facts of the case, in brief, are as follows:

The accused was working as Sales Manager in M/s.Gurudatta Industries, Bangalore entrusted with supply of tent house materials. The wife of the complainant by name Padmavathi has been running a tent house under the name and style of Vijaya Sree Suppliers at Bhadrachalam. She has placed an order for supply of tent house materials on 8.8.2002 and paid Rs.1,00,000/- to the accused. The accused failed to supply the materials and after repeated demands, he had executed a letter, dated 10.11.2002, and issued the cheque – Ex.P-1 bearing No.150652, dated 14.11.2002 drawn on State Bank of Hyderabad, Cheerla Branch to discharge the said debt. When the complainant has presented the said cheque through Andhra Bank, Bhadrachalam Branch, it was returned dishonoured with an endorsement as

“insufficient funds” and the same was communicated by a memo, dated 18.4.2003. Then, the complainant got issued a legal notice, dated 29.4.2003, to the accused by way of a registered post as well as certificate of posting. He received the notice sent by certificate of posting but evaded to receive the notice sent by registered post. Ultimately, he gave a reply on 14.5.2003 through his Advocate making false and frivolous allegations. The accused failed to pay the amount covered by the cheque within the stipulated period. Hence, the complaint.

3. The Sub-Divisional Magistrate, Mobile Court, Bhadrachalam took the case on file as C.C.No.448 of 2003 and issued summons to the accused. Later, the case was transferred to the file of the Additional Judicial Magistrate of First Class, Kothagudem where it was numbered as C.C.No.60 of 2006 and again, it was transferred to the Court of the Judicial Magistrate of First Class, Bhadrachalam and numbered as C.C.No.832 of 2006.

4. On appearance of the accused, copies of documents have been supplied to him as required under Section 207 Cr.P.C. The accused was examined under Section 251 Cr.P.C. explaining the substance of the accusation levelled against him. The accused denied the accusation levelled against him and claimed to be tried.

5. During the trial, the complainant examined himself as P.W.1 and got marked Exs.P-1 to P-9.

6. After closure of the evidence on the side of the complainant, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against

him in the evidence of P.W.1. The accused denied the incriminating material put to him. The accused examined himself as D.W.1 and two more witnesses as D.Ws.2 and 3 and adduced documentary evidence Exs.D-1 to D-12 in rebuttal.

7. The learned trial Judge, basing on the oral and documentary evidence adduced by either party, held that the complainant has miserably failed to prove the guilt of the accused beyond all reasonable doubt and hence, found the accused not guilty of the offence with which he stood charged and accordingly, dismissed the complaint and acquitted him under Section 255(1) Cr.P.C. for the offence punishable under Section 138 of the Negotiable Instruments Act. Challenging the same, the complainant filed the present appeal.

8. Heard and perused the material available on record.

9. The learned trial Judge, while appreciating the evidence produced by the complainant, disbelieved the case of the complainant on the basis of the evidence adduced by the accused. The accused successfully rebutted the presumption that the said cheque was given in favour of the wife of the complainant in discharge of the legally enforceable debt. The complainant relied on two documents i.e., Ex.P-1 – cheque issued by the accused and Ex.P-2 – letter addressed by the accused to the complainant. Insofar as Ex.P-2 is concerned, it is a letter addressed by the accused informing the complainant that he received an amount of Rs.1,00,000/- and as he could not repay the said amount and also not in a position to supply the materials as agreed, he issued

cheque which is marked as Ex.P-1. In the statutory legal notice issued by the complainant, the issuance of Ex.P-2 letter was not mentioned. There is a reasonable doubt about the execution of the same in view of the contents in the said letter and also the gap between the contents and the signature of the accused. It is the case of the accused that he signed on the blank letter pad as well as cheques and issued the same to one C.Bose who is running M/s.Gurudatta Industries to which the accused was the Manager for Bangalore Branch and later, the complainant pressed the same into service. Though there is a gap between type written matter and the signature of the accused in Ex.P-2, no witness was examined to prove the execution of Ex.P-2. Except filing Ex.P-2 letter, which is not satisfactorily proved by any cogent and convincing evidence and except his self serving testimony as P.W.1, the complainant did not adduce any oral or documentary evidence to prove the payment of Rs.1,00,000/- by his wife to the accused. Hence, considering the said aspect, the learned trial Judge acquitted the accused. No doubt, in a case for the offence punishable under Section 138 of the Negotiable Instruments Act, if the accused is able to rebut the presumption successfully, then the accused is entitled for acquittal. Hence, this Court is of the view that the impugned judgment warrants no interference of this Court and the appeal fails and is liable to be dismissed.

10. Accordingly, this Criminal Appeal is dismissed confirming the judgment, dated 21.6.2007, in C.C.No.832 of 2006 on the file of the Judicial Magistrate of First Class, Bhadrachalam.

11. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

JUSTICE RAJA ELANGO

23.9.2016
AMD



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Date: 23.9.2016

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