THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.508 of 2007

JUDGMENT:

Heard learned counsel for the appellant and learned Additional Public Prosecutor for the State, and perused the record.

This appeal is filed by the complainant aggrieved by the acquittal of the accused in C.C.No.312 of 2004 on 15.11.2006 by the learned VII Additional Chief Metropolitan Magistrate, Hyderabad.

Learned counsel for the appellant would submit that an amount of Rs.1,50,000/- was borrowed by the accused to meet the educational needs of her children. The loan was given on 19.10.2003. The accused promised to repay the same and issued two cheques, one for Rs.50,000/- and another for Rs.1,00,000/-. Both the cheques were bounced. Thereafter, the accused did not pay the due amount and ultimately, the appellant filed a complaint before the Court concerned to punish the accused for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act (for short 'the Act'). There is evidence of P.Ws.1 to 3 to show that the cheques given by the accused were dishonoured for want of sufficient money in the account. Ex.P.1 is the cheque dated 10.12.2003. Ex.P.2 is the cheque dated 10.01.2004. Ex.P.3 is the cheque return memo dated 10.04.2004. Ex.P.4 is the cheque return memo dated

12.04.2004. Ex.P.5 is the office copy of legal notice dated 21.04.2004. Ex.P.6 is the reply notice dated 15.05.2004. All these documents would clinchingly establish the borrowings made by the accused and giving the two cheques, Exs.P.1 and P.2, and the reason for dishonour of the cheques for want of sufficient money in the account of the accused. The trial Court did not appreciate all the facts and circumstances of the case, erroneously dismissed the complaint and acquitted the accused. The legally enforceable debt is proved by the appellant and ultimately, prayed to convict and sentence the accused for the offence punishable under Section 138 of the Act.

As per P.W.1's evidence, the accused borrowed Rs.70,000/- in 2004. As per the averments in the complaint, the accused borrowed Rs.1,50,000/- on 19.10.2003. As per the record placed before this Court, the transaction alleged to have taken place on 19.10.2003. The quantum of borrowings is also not correctly stated by P.W.1 in her evidence. When an amount of Rs.70,000/- is borrowed, the appellant has filed the cheques for Rs.1,50,000/- stating that the said amount is due from the accused. She did not file any calculation memo or document to show that she is entitled to receive Rs.1,50,000/- from the accused and to discharge the said obligation, the accused issued subject cheques, Exs.P.1 and P.2. To convict the accused under Section 138 of the Act, the appellant has to prove the legally enforceable debt. There is no single document to show that the accused was due an amount of Rs.1,50,000/- on the date of handing over the cheques marked as Exs.P.1 and P.2. Except the oral evidence of P.W.1 with regard to the alleged transaction and the rate of interest, there is no other evidence on record. The defence put up by the accused is that the appellant used to carry on business in share transactions. They were having good terms. During that period, the cheques were issued to the appellant and were returned. Later, the complaint was filed. The Court below has discussed the issue, whether the accused gave subject cheques to discharge the legally enforceable debt. The lower Court assigned reasons and ultimately, dismissed the complaint holding that there was no legally enforceable debt.

The defence set up by the accused cannot be discarded. The appellant failed to discharge the burden that the cheques were given to discharge the legally enforceable debt. Under these circumstances, there is nothing to take a different view. The findings of the trial Court are based on record. There is no infirmity in the impugned judgment.

Therefore, the impugned judgment is confirmed and the Criminal Appeal is dismissed.

Dr. SHAMEEM AKTHER, J

16th NOVEMBER, 2017.

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