

SMT JUSTICE T.RAJANI

CRIMINAL APPEAL No.1484 OF 2007

JUDGMENT:

This Criminal Appeal is preferred by appellant-complainant, against the judgment of the IX Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur (for short, 'the trial Court') in C.C. No.1360 of 2005, dated 26.07.2007, acquitting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. On 14.08.2018, none appeared on behalf of the appellant, the matter was directed to be posted to 28.08.2018; on which date, at request of learned counsel for the appellant, the matter was posted to 04.09.2018. On 04.09.2018, as none appeared for the appellant, the matter was again posted to 11.09.2018 as to render final opportunity, making it clear that if none appears for the appellant on that day, the matter would be decided on merits. But, again on 11.09.2018, at request of learned counsel for the appellant, the matter was posted to 18.09.2018. Today also when the matter is called, neither the appellant nor his counsel appeared before this Court. Hence, the Appeal is taken up for disposal on merits.

3. The facts of the case, briefly, as per the complaint are as follows:

The complainant does cloth business and the accused works as commission agent in selling the clothes being purchased from the complainant, on credit basis, and became due an amount of Rs.81,733-65 p.s. On persistent demands made by the complainant, the accused issued a cheque for the said amount but, when the cheque was presented for collection, it was dishonoured on the ground of '*insufficient funds*'. A notice was issued to the accused demanding payment but the accused did not give any reply nor paid any amount. Hence, the complaint.

4. The trial Court took cognizance of the case for the offence under Section 138 of the Negotiable Instruments Act and conducted the trial of the case. After

completing all the required legal formalities and after examining the accused under Section 251 of the Criminal Procedure Code, examined P.W.1 and marked Exs.P-1 to P-4, on behalf of the complainant. The accused was examined as D.W.1 and marked Ex.D-1 on his behalf.

5. The trial Court, after appreciating the evidence and considering the material on record, passed the impugned judgment, against which the present Appeal is preferred on the following grounds:

The trial Court did not properly consider documentary evidence and erroneously came to the wrong conclusion; it failed to observe that there is legally enforceable debt on the part of the accused; and failed to see when the accused admitted that there was a transaction of clothes business between him and the complainant and the trial Court ought not to have believed the version of the accused that the cheque was given as security, as there is a fundamental presumption under Section 139 of the N.I. Act that every negotiable instrument is presumed to be supported by consideration unless proved otherwise. Based on these submissions, the appellant sought for setting-aside the judgment of the trial Court.

6. The contention of accused is that the complainant did not supply any clothes, though he promised to supply the same to him, and the complainant obtained a blank signed cheque from the accused and later complainant filled up the cheque and presented it for collection. He contends that there is no legally enforceable debt under the cheque.

7. The trial Court examined the evidence of the complainant as P.W.1 and observed that he did not file any documentary evidence, in proof of the supply of the clothes; it also took note of the fact that the complainant did not state that he does not have credit bills or any account books. In such circumstances, it was held that no such transaction took place.

8. The complainant is expected to maintain some accounts for the clothes supplied by him, in view of the defence of the accused being that no clothes were

supplied to him. Unless the complainant succeeds in proving that the agreement, as agreed between the parties, was fulfilled, the amount under cheque does not become a legally enforceable debt. Hence, no error is found in the judgment of the trial Court.

9. Accordingly, with the above observations, the Criminal Appeal is dismissed.

10. As a sequel, the miscellaneous petitions, if any pending, shall stand dismissed.

Date: 18.09.2018.
Dsh

T. RAJANI, J



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Date. 18.09.2018

DSH