

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1308 of 2007

ORDER:

Impugning the judgment of the Additional Judicial Magistrate of First Class, Kothapet, East Godavari District in CC.No.40 of 2005 dated 11.06.2007, this appeal is preferred by the appellant-complainant. By virtue of the said judgment, the Court below acquitted the accused for the offence under Section 138 of the Negotiable Instruments Act.

2. Briefly the facts of the case are that the complainant is a registered firm. The accused firm contacted the complainant in the month of April 2003 and requested them to supply certain drugs on credit basis, with a condition to repay the amount within one month from the date of receipt of the consignment, without interest. As such, the complainant dispatched the drugs worth Rs.10.45,091/- under several invoices and credit bills. The accused firm returned some goods to the complainant, worth Rs.6,30,750/- and paid cash of Rs.55,000/-. The accused are as such liable to pay Rs.3,59,341/- along with interest at 24% per annum. The accused issued cheque for Rs.3,50,000/- in discharge of the said amount and the same was dishonoured when it was presented for collection. A legal notice was issued but the accused did not choose to pay the amount. Hence, the complaint.

3. The Court below, after conducting the trial of the case, passed the impugned judgment acquitting the accused, against which the present appeal is preferred on the grounds that the Court below should have seen that the complainant, by examining herself and by

marking Exs.P1 and P12, established that the accused has issued the cheque for discharging the legally enforceable debt and it ought to have seen that the accused did not deny the issuance of cheque.

4. Heard the learned Public Prosecutor. None appears for the appellant in spite of the matter being posted finally.

5. From the complaint, it can be understood that there was an agreement to supply the drugs by the complainant to the accused. The drugs worth Rs.10,45,091/- were supplied to the accused in pursuance of the said agreement. But some goods worth Rs.6,30,750/- were returned by the accused to the complainant. Towards the goods, which were received by the accused, Rs.55,000/- was paid and balance of Rs.3,59,341/- was due. It is towards discharge of the said amount that the cheque for Rs.3,50,000/- was issued. At that juncture itself, a doubt can be entertained as to why the cheque had to be issued only for Rs.3,50,000/- when the due amount was Rs.3,59,341/-. The evidence also shows that accused intimated the bank not to honour the cheque that would be presented for collection and the same was dishonoured on the ground of drawer stopped payment. The defence of the accused has been that the cheque was issued towards collateral security for supply of drugs by the complainant firm on credit basis. The statement of account was marked as Ex.P11. The said statement does not show that Rs.55,000/- was received from the accused and the statement only reflected the supply of goods and return of goods by the accused. The cheque book, Ex.D2, shows that a cheque was issued in favour of the complainant firm, which is nothing but Ex.P1 cheque. Hence,

the contention of the accused that the cheque was issued at the time of entering into the transaction with the complainant for the purpose of collateral security, derives support.

6. The Court below also noticed discrepancy between the date contained on the cheque and the letter, Ex.D10, submitted by the accused to the bank, which are 11.10.2004 and 28.04.2004, which is much earlier to the date found on the cheque and thereby, concluded that blank cheque was issued by the accused. The Court below also took into consideration the amount that was mentioned in the suit, which was filed for recovery by the complainant, which was only Rs.3,17,203/-. When the amount due from the accused is Rs.3,50,000/-, there is absolutely no reason for the complainant to reflect the amount of Rs.3,17,203/-. Hence, by virtue of this discrepancy, the Court below entertained a doubt and held that the defence of the accused was proved by preponderance of probabilities and rightly so. In view of the above, this Court opines that there is absolutely no reason to interfere with the judgment of the Court below.

The criminal appeal is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

December 5th, 2018
DSK

T. RAJANI, J