

SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.1764 of 2007

JUDGMENT:

This appeal is preferred by appellant/complainant, against the judgment of the I Additional Chief Metropolitan Magistrate, Vijayawada passed in C.C.No.359 of 2005 on 23.10.2007, acquitting the accused of the offence under Section 138 of Negotiable Instruments Act.

The complainant preferred the present appeal, assailing the impugned judgment on the grounds that the Court below ought not to have dismissed the complaint on flimsy grounds when there are substantial grounds to bring home the guilt of the accused for the alleged offence; the Court below ought to have convicted the accused as the guilt of the accused in issuing the cheque and its dishonour are proved to be due to insufficient funds in the account of the accused; the Court below went wrong in holding that the complainant has not sent the statutory notice to the correct address of the accused and acquitted the accused on the said grounds alone; the Court below ought not to have dismissed the case on the ground that the address to which notice was sent was not the address of the accused; the Court below has failed to notice that the legislation has intended to punish the accused who issued the cheques with insufficient funds in their accounts. Based on the above grounds, the complainant seeks to set aside the impugned judgment.

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

On 27.02.2003 the accused borrowed Rs.60,000/- from the complainant, for his business purpose and executed a pro-note as collateral security, in favour of the complainant, on the same day, agreeing to repay the same with interest at the rate of 24% with yearly rests as and when demanded, either to the complainant or to his order. After repeated demands, accused issued a cheque dated 25.03.2005 for Rs.60,000/- towards principal amount due under the pro-note, promising to pay the interest later. Complainant presented the same for collection on 29.03.2005 but it was returned dishonoured, with an endorsement "ACCOUNT CLOSED" vide memo dated 30.03.2005. Complainant sent statutory notice to the accused demanding payment of cheque amount within statutory period but accused evaded the notice sent through registered post, having received the notice sent through certificate of posting. On the failure of repayment, the complainant filed the complaint.

On appearance of the accused, copies of complaint and its annexure were furnished and he was examined under Section 251 Cr.P.C. Accused pleaded not guilty.

On behalf of the complainant, P.Ws.1 and 2 examined and Exs.P.1 to P.7 were marked. On closure of complainant's side evidence, accused was examined under Section 313 Cr.P.C.

He denied the incriminatory evidence against him. On behalf of the accused D.Ws.1 and 2 examined and Exs.D1 to D8 were marked. After considering the evidence and material on record, the Court below passed the impugned judgment.

Now the point that arises for consideration is whether there are any grounds to set aside the impugned judgment.

POINT No.1:

The Court below did not disbelieve the issuance of the cheque and it also observed that the signatures on the pro-note are not disputed. The contention of the accused that the blank pro-note and cheques were issued as a security in the year 2001 was also recorded. The other contention of the accused was that he was not served with the statutory notice and he never stayed in the address to which either statutory notice is sent or summons of the complaint are sent. The evidence of D.W.2 was adduced in support of his contentions and Ex.D.1 to D.8 were also marked. Ex.D1, which is allegedly the calculation memo said to have been prepared by the complainant, dated 15.12.2003, was also marked and the Court below recorded, that as per the evidence let in by the accused, there is no dispute between the complainant and the accused till 15.12.2003, the date on which alleged settlements took place under Ex.D1. With regard to serving of notice on the accused, the Court below held that since notice was not served on the accused, the compliant has to fail. It was noted that the statutory notice sent in the month of April, 2005 was returned

un-served. The address shown on the notice was Madhura Nagar. The Court below observed that if the accused had not stayed in the said address, it could not return with an endorsement that door number is incorrect addressee left. By considering the documents marked as Exs.D1 to D8, the Court below came to the conclusion that the accused never stayed in the said address and that the notice was sent to incorrect address. The accused relied on the judgment of the Kerala High Court reported in 1993 Criminal Law Journal, page 2196 which is to the effect that the statutory notice if it is returned with an endorsement un-claimed, burden to establish sending of notice to the correct address and its receipt, rests on the complainant. Hence, by virtue of the above, the Court below dismissed the complaint, which in the considered opinion of this Court cannot be found fault with.

In the result, this appeal is dismissed.

As a sequel, miscellaneous applications, if any, pending in this appeal shall stand closed.

JSUTICE T. RAJANI

Date: 28.08.2018
LSK