THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1071 of 2007

JUDGMENT:

This appeal is preferred by appellant-complainant, against the judgment of the I Additional Judicial First Class Magistrate, Narasaraopet in C.C.No.55 of 2005 dated 19.06.2007, acquitting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

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

The accused borrowed an amount of Rs.40,000/- from the complainant on 20.02.2003 for his family expenses and executed a promissory note agreeing to repay the amount with 18% interest. On demand, the accused issued cheque dated 12.07.2004 for Rs.50,000/- and when the cheque was presented for collection, it was dishonoured on the ground of insufficient funds. The said fact was informed to the accused and the accused requested the complainant to present the cheque for collection after 20 days. As such, the complainant presented the cheque on 10.09.2004, which was again dishonoured. A notice was issued to the accused demanding payment but the accused did not give any reply nor paid any amount. Hence, the complaint.

3. 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.Ws.1 to 3 and marked Exs.P1 to P6 on behalf of the complainant. Ex.D1 was marked on behalf of the accused.

4. The Court below, 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 Court below did not properly consider documentary evidence and erroneously came to the wrong conclusion; it failed to observe that there is no legally enforceable debt and that the appellant did not produce promissory note; it came to the conclusion ignoring that the promissory note will serve for corroborating the borrowing and that the cheque is the main enforceable document; it ignored the fundamental presumption that every negotiable instrument is presumed to be supported by consideration unless proved otherwise; the Court below by coming to the conclusion that the appellant ought to have moved the civil court for his remedies fizzled out the intention of the legislature to expedite the economic transactions through issuance of cheques and the penalization in case of dishonour; it misconstrued the decision relied upon by the complainant. The second respondent is admittedly a bank employee and moreover, he specifically admitted that he issued two cheques to country wide finance and they were also dishonoured. All the facts clearly shows that the second respondent being a banker and having known the repercussions of dishonouring of cheque, with an intention to cheat. The second respondent did not issue reply notice to the notice issued by the complainant.

5. Now the points that arise for consideration are as under:

1. Whether the cheque is proved to have been issued towards legally enforceable debt and whether the judgment of the Court below is sustainable.
2. To what result.

POINT No.1:

6. The complainant, as P.W.1, reiterated the contents of the complainant. The bank manager, P.W.2, also spoke about the presentation of the cheque and his forwarding the same to SBI for collection. P.W.3, the Assistant Manager of SBI, spoke about the accused holding an account in their bank and about issuing cheque book to him. He also spoke about the dishonour of the cheque on the ground of insufficient funds. The accused was examined as R.W.1 and Ex.D1 was marked during his examination, which is a copy of his transfer order. His evidence is that he purchased a Hero Honda under a finance scheme for Rs.45,000/- and sold it to the complainant for Rs.30,000/-. As there was a loan, he did not transfer the vehicle in the name of the complainant and as a security, he gave an empty cheque to the complainant and he cleared all the instalments and uncleared balance was Rs.12,863/-. On 12.07.2004, he was at Piduguralla. The financier took away the motor cycle and as such, the complainant filed a complaint against him basing on the blank cheque.

7. The Court below evaluated the evidence of both sides and observed that P.W.1 could not state about the present job of the accused and about his salary particulars and the details of his family members. The promissory note, which was obtained from the accused,

is not filed along with the complaint. The Court below observed that there was a categorical statement in the complaint and the evidence of P.W.1 that the accused executed a promissory note for Rs.40,000/- agreeing to repay the same with interest at 18% per annum. Hence, the promissory note becomes the basic document for the cheque, as it is issued towards discharge of the debt under the promissory note. The reason for not producing the promissory note is not stated by the complainant. It is not the case of the complainant that he either lost the promissory note or that he filed a suit based on the promissory note in order to understand that there was some good reason for him not to file the promissory note. If there is no supporting document for the debt, perhaps, believing the evidence of P.W.1, a presumption with regard to the cheque being issued towards legally enforceable debt could have been drawn. But by virtue of his own lapse in not producing the promissory note, which is the basis for issuance of the cheque, he fails in proving his case, that the cheque was issued towards legally enforceable debt. Hence, in view of the above, this Court opines that there is absolutely no reason to interfere with the judgment of the Court below.

The point is answered accordingly.

<u>POINT No.2</u>:

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

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T. RAJANI, J

September , 2018
DSK