

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1770 of 2006

JUDGMENT:

This appeal is preferred by appellant-complainant, against the judgment of the Additional Metropolitan Sessions Judge for Trial of Communal Offence Cases cum VII Additional Metropolitan Session Judge, Hyderabad in CRLA.No.93 of 2006 dated 07.06.2006 by virtue of which the lower appellate Court reversed the judgment of the trial Court in C.C.No.462 of 2005 dated 22.02.2006 convicting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act').

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

The complainant is a businessman dealing in printing and material business and the accused is his friend. In the month of February 2003, both the complainant and the accused arrived at settlement of account, pertaining to earlier transaction of buffaloes and arrived at a balance of Rs.12.45 lakhs and the accused agreed to pay Rs.21,00/- towards compensation for causing delay. Thus the amount was arrived at Rs.12.45 lakhs and the accused paid Rs.1.45 lakhs on two different occasions and obtained receipt and for balance 11.00 lakhs the accused issued post-dated cheque on 20.07.2003. The same was dishonoured when it was presented for collection. Notice sent to the accused was returned with an endorsement as not claimed. Hence, the complaint.

3. The lower appellate court reversed the conviction against which the present appeal is filed on the following grounds:

The Court below erred in stating that the notice, Ex.P3, was issued beyond the period of limitation; it erred in not noticing the amendment to clause (b) of Section 138 of the Act, wherein the period of giving notice was increased from 15 days to 30 days; it ought to have considered the presumption under Section 139 of the Act; it failed to appreciate that there was no rebuttal evidence that was let in by the accused, to negative the presumption; it failed to see that there was no reply to the statutory notice and it failed to consider the chief examination of P.W.1, wherein it was categorically mentioned that the accused made part payments of Rs.1,45,000/- on two occasions and obtained receipts for the said payments. On the basis the above, the appellant seeks this Court to set aside the judgment of the lower appellate Court.

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

1. Whether the cheque issued after three years from the date of contract can be said to have been issued towards legally enforceable debt and whether the judgment of the lower appellate Court is sustainable.

2. To what result.

POINT No.1:

5. The admitted case of the complainant is that the transaction pertaining to buffaloes was made in the year 1999 and though a written contract was also entered into on 27.03.1999, the same was not filed in the Court. In the month of February 2003, the accused on his own accord approached the complainant to settle the account. Whether the said act of the accused to settle the account after lapse of three years form the date of contract, by which date the limitation

under the contract expired, would make the debt a legally enforceable debt is the pertinent question. The lower appellate Court considered the decision relied upon by the accused in *GIRIDHARI LAL RATHI v. P.T.V. RAMANUJACHARI* [1997 (1) ALT (CRL) (AP)] wherein it was held that the cheque, which is issued after expiry of the agreement, cannot be said to be issued towards legally enforceable debt.

6. The counsel for the appellant did not appear before the Court, on the date of hearing, to make any contrary statement to the principle laid down in the above decision. Hence, the appeal fails on this sole ground.

7. When the cheque is found to be issued beyond the date of contract, there is no need to invoke the presumption under Section 138 of the Act and there would not be any need for the accused to rebut the presumption. The initial burden laid on the complainant has to be discharged by proving that, *prima facie*, the cheque is issued towards a legally enforceable debt. The complainant, having failed to discharge the said burden, has to fail in this appeal also. 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.

POINT No.2:

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

T. RAJANI, J

September , 2018
DSK