

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.601 of 2007

ORDER:

This appeal is directed against the judgment of the Judicial First Class Magistrate, Bodhan in CC.No.413 of 2004 dated 29.12.2006 by virtue of which the Court below acquitted the accused for the offence under Section 138 of the Negotiable Instruments Act (for short 'the Act').

2. The facts of the case, briefly, are that the accused is due an amount of Rs.1,22,500/- to the complainant and in discharge of the same, the accused issued the cheque for the same amount. The cheque was dishonoured when it was presented for collection, on the ground of insufficient funds. The complainant made a demand on 29.09.2004 and the accused executed an agreement stating that he could not pay the amount due to some unavoidable circumstances and that he will pay the amount on or before 01.07.2004 and requested the complainant not to deposit the cheque. As the accused did not pay the amount till 01.07.2004, the complainant presented the cheque which was dishonoured on the ground that payment was stopped by the drawer due to insufficient funds. A notice was issued to the accused but the accused neither chose to reply to the notice nor did he pay the amount. Hence, the complaint.

4. The Court below, after framing the charge against the accused for the offence under Section 138 of the Act, conducted trial of the case and based on the evidence, passed the impugned judgment, against which the present appeal is preferred on the grounds that the

Court below failed to see that the accused has admitted his signature on the cheque and that, hence, presumption comes into operation. The Court below failed to see that the accused did not place any evidence to show that Ex.P1, cheque, was not issued in due discharge of a legally enforceable debt. The Court below ought to have seen that Ex.P7 was executed by the accused stating that he would repay the cheque amount on or before 01.07.2004.

5. Heard the Public Prosecutor. The counsel for the appellant does not appear in spite of the matter being posted for hearing finally.

6. The cheque, which is allegedly issued by the accused towards the loan that was taken from the complainant is for Rs.1,22,500/-. The Court below observed that there is material alteration in the cheque. It, however, also observed that there are signatures made at the place of alteration. The accused admitted the signature on the cheque but his contention is that the said cheque is issued as security for the loan, which was taken by his mother from the complainant and that his mother discharged the loan but the complainant failed to return the cheque, though he returned the promissory note, which was executed by his mother. The conduct of the complainant was also rightly appreciated by the Court below. Until the time of his cross-examination, he did not choose to disclose about the loan that was taken by the mother of the accused on 10.05.1999 for Rs.50,000/-. He also, for the first time, speaks about the execution of the promissory note by the accused for the amount under the cheque. His explanation for not filing the promissory note in the Court is that it was given to the accused at the time when he issued the cheque.

The said explanation does not seem to be cogent. There would not be any necessity for the complainant to return the promissory note even if the cheque is issued, as that would be a supporting document for the loan that he advanced to the accused. He also suppressed the fact of the promissory note in his legal notice and in the chief examination.

7. No fault can be found with the Court, which, on the conspectus of the facts and circumstances of the case, opined that the complainant failed to discharge the burden laid on him. It also declined to draw the presumption under Section 118 of the Act, on the ground that the initial burden of proving that the cheque was issued towards a legally enforceable debt was not discharged by the complainant. The Court below took up the exercise of comparing the signatures of the accused on Exs.P1 and P6 and found that there was no similarity between the signatures. Notice, which was served on the accused, was also found to have been sent to an incorrect address. Considering all the above, the Court below acquitted the accused. Hence, when the Court below has taken up a meticulous examination of the evidence and the facts of the case and has arrived at a conclusion, this Court cannot interfere with the said conclusion even if there is another possible view that can be taken, more so in a judgment of acquittal. Hence, in view of the above, the judgment of the Court below is confirmed.

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

T. RAJANI, J

December 5th, 2018
DSK