SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.734 OF 2004

JUDGMENT:

This appeal is preferred, by the appellant, who is the complainant, aggrieved by the Judgment, dated 07.01.2004, passed in C.C.No.648 of 2000 by the Court of I Additional Judicial Magistrate of First Class, Warangal, by virtue of which the trial court acquitted the accused for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act").

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

The accused is due an amount of Rs.65,000/- to the complainant after the settlement of account between the complainant and the accused. The accused issued two cheques of Canara Bank APMC extension counter, Warangal, for Rs.10,000/- and Rs.55,000/- on 18.08.2000 in favour of the complainant. The complainant presented the said two cheques on 23.08.2000 through his banker, Bank of Baroda, Warangal, which, *in turn*, sent the same to the Canara Bank, APMC Extension counter, Warangal, in which the accused has his account. But the said Canara Bank returned the said cheques by way of a letter to the Bank of Baroda stating that the account of the accused was closed. Thereby, the complainant approached the accused about the return of the cheques. Since the accused did not respond to him, the complainant issued a legal notice, dated 25.08.2000 calling upon the accused to pay the amount due to him. Hence, the complaint.

3. The trial court has taken the case on file and after complying with all the legal formalities, framed charges for the offence under Section 138 N.I.Act. The plea of not guilty by the accused was recorded and trial was conducted. During the course of trial, PWs.1 and 2 were examined and Exs.P1 to P7 were marked. The accused was questioned about the incriminating circumstances appearing against him in the evidence of prosecution witnesses, when he was examined under Section 313 Cr.P.C. on behalf of the accused, DWs.1 and 2 were examined and Exs.D1 to D11 were marked.

4. After considering the evidence and material on record, the lower court passed the impugned judgment acquitting the accused.

5. Aggrieved by the said judgment, this appeal is preferred on the grounds that the trial court failed to appreciate that the accused admitted his signatures on the two cheques marked as Exs.P1 and P2 and has not taken any steps nor lead any evidence to rebut the presumptions under Section 139 of Act. The trial court failed to appreciate that the accused has not taken the defence of discharge and in the absence of such a plea, the trial court ought not to have 34xercised to make out a case for the accused. The trial court failed to appreciate that unless the law gives any presumption, the person who intends to rely upon any evidence, has to prove the same and the person

who disputes has no burden to take steps to lead negative evidence. The trial court ought to have held that the plea and evidence as raised on behalf of the accused clearly proves that the impugned cheques marked as Exs.p1 and P2 were issued in connection with the legal liability and towards discharge of the said liability. The trial court failed to appreciate that the plea as raised by the 1st respondent that the appellant has taken away his two blank cheques signed from his table has no basis and ought to have disbelieved the said theory in the absence of any cogent evidence. The trial court failed to appreciate that the 1st respondent intentionally closed his account and has taken false grounds for the first time in the case. The triad court did not choose to consider the judgments of the apex court and of the court regarding presumption available under Section 139 of the Act and also regarding the burden casted on the accused. The trial court failed to appreciate that the evidence of DW2 has no bearing on the case and in the absence of any plea of discharge, the evidence of DW2 and Exs.D1 to D11 should have been rejected. The trial court failed to appreciate that the plea of accused is contradictory in itself as on the one hand he denied the drawing of cheque in favour of the complainant but on the other hand he adduced evidence taking the plea of discharge. The trial court failed to appreciate that the liability referred in the notice and in the complaint is one and the same.

6. None appeared for the appellant in spite of the matter being captioned for dismissal. Hence, the matter is taken up for consideration on merits after hearing the Public Prosecutor.

7. Now the point that arises for consideration is whether complainant would succeed in proving that the accused issued cheques towards legally enforceable debt.

<u>POINT: -</u>

8. The evidence of PW1 is that the accused is known to him two or three years prior to the filing of the complaint. He used to do commission business in Atta, Ravva etc., in Warangal Town. The accused was a partner in Srinivasa Roller Flour Mills at Gorrekunta, Warangal. The accused used to manufacture Atta, Ravva in his mill and used to supply to him for selling the same to various retailers and wholesalers on commission basis. He used to keep the commission amount also with the accused along with the consideration of the goods supplied through him. The accused detained the commission amount payable to him since three to four years and if they both settled the account and it came to light that the accused is due an amount of Rs.65,000/-. In discharge of the said cheques, the said two cheques were issued. Hence, the case of the complainant seems to be that the cheques were issued towards the payment of the commission amount, which was due to him.

9. As against the said evidence of PW1 that the commission amount was due to him, the accused, who was examined as

DW1, deposed that the payments under Exs.D2 to D11 bills were made by the cashier after he put his initials on the vouchers. The signatures of PW1 were obtained on the said vouchers. The lower court found that the version of PW1 was not trustworthy as the plea taken in the legal notice and the facts brought out in the evidence are inconsistent. The bills, which are marked as Exs.D2 to D11, are in the name of Srinivasa Flour Mills, but the cheques were issued in the personal capacity of the accused.

10. The lower court rightly found that the evidence of DW1, the admissions of PW1, and the suggestions made by PW1 in the cross-examination of DW1, would prove that the amounts, if any, are due only from Srinivasa Flour Mill and not from the accused in his personal capacity. Since there are two partners in the firm, the accused cannot alone be made liable for the amount, if any, due from the firm. The probabilities of the case were also rightly held as proving the defence of the accused that the complainant took away the signed cheques of the accused clandestinely. The fact that the cheques were issued on the closed account was also rightly appreciated in favour of the accused. The contention of the complainant that the bills are not genuine was also rightly met with by observing that the signatures of PW1 were very much present on the said bills and the complainant did not choose to send the bills to an expert opinion to disprove that he signed on the said bills.

11. Hence, in view of the above, this court opines that the cheques issued by the accused are not towards legally enforceable debt and this court does not find any ground to interfere with the judgment of the court below.

12. In the result, the Criminal Appeal is dismissed confirming the Judgment, dated 07.01.2004, passed in C.C.No.648 of 2000 by the Court of I Additional Judicial Magistrate of First Class, Warangal.

T. RAJANI, J

October 26, 2018
LMV