THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRL.R.C.No.849 of 2012

ORDER:

This Criminal Revision Case is directed against judgment and decree dated 29.03.2012 passed by the Metropolitan Sessions Judge at Hyderabad in Crl.A.No.384 of 2011, wherein the learned Judge while dismissing the Criminal Appeal confirmed judgment dated 04.03.2011 passed by learned II Additional Chief Metropolitan Magistrate, Hyderabad, in C.C.No.10 of 2007, whereby the private complaint filed by petitioner/complainant for the offence under Section 420 I.P.C was dismissed and respondent/accused was acquitted.

2. The factual matrix of the case is thus:

As per complainant, himself and accused are close family friends since about a decade and on account of such friendship, accused approached him on 25.08.2006 and sought for a hand loan of Rs.45,000/- due to her dire necessity in business. The accused was doing saree business at her residence. The complainant, as a helping gesture, advanced said hand loan and accused agreed to repay the same within two months. The accused issued Exs.P.1 and P.2

the ground that account was closed. The contention of complainant is that accused closed her account even prior to issuing post dated cheques or subsequent to issuing cheques. After dishonour of the cheques, when complainant asked for repayment of the amount, accused did not oblige. Therefore, the acts of accused were nothing sort of intention to cheat complainant. The trial Court has framed a charge for the offence under Section 420 I.P.C. and conducted trial. During trial, complainant was examined as P.W.1 and Exs.P.1 to P.4 were marked on his behalf. No oral or documentary evidence was adduced on behalf of accused. The defence of accused was that the mother of P.W.1 used to run chits and in such transaction, accused had given a blank signed cheque to her for the purpose of security and that the mother of P.W.1 was running the chit transactions illegally. The said chits were not pressed into service in the instant case.

The trial Court, on appreciation of the evidence on record, has opined that P.W.1 has not even stated a single sentence against accused disclosing any kind of conduct that constitute fraud or dishonest inducement. There was absolutely no evidence on behalf of complainant as to whether the account of accused was closed even before issuance of the cheques or subsequent thereof. Having regard accused to get the hand loan from complainant with an intention to deceive him and dishonor the cheques issued by him. However, P.W.1 failed to produce such evidence. The trial Court further observed that the closure of the account by accused cannot be treated as a consequence to a preplanned intention to deceive complainant. On this observation, the trial Court held that complainant failed to prove the charge under Section 420 I.P.C. and accordingly acquitted accused.

3. Aggrieved by the same, complainant filed Criminal Appeal No.384 of 2011. The learned Metropolitan Sessions Judge, while dismissing the appeal, observed that from the mere fact that accused closed her account, it cannot be inferred that she had fraudulent and dishonest intention from the inception. The lower appellant Court further observed that it was pertinent to note that the amount was lent by complainant to accused as hand loan due to the long acquaintance between them and from this fact, it can be inferred that there was no dishonest or fraudulent intention in issuing post dated cheques for the amount received by accused. Thus, the lower appellate Court also gave similar finding to that of the trial Court and held that complainant failed to prove the charge for the offence under Section 420 I.P.C., and accordingly dismissed the appeal. Hence, the

the year 2012 and hence, this Court perused the record and passed the order.

5. As can be seen from the record, it is the contention of complainant that accused issued two post dated cheques for discharge of hand loan taken by her and the same were dishonored with an endorsement "Account closed" and that the account was closed even prior to or subsequent to the issuance of cheques and therefore, it is clear that accused had an intention to cheat the complainant. However, having regard to the facts in this case, it is very difficult to infer the fraudulent intention of accused. Both complainant and accused are known to each other and having friendship. The accused was doing saree business and for that purpose, she requested complainant for hand loan and complainant considering the necessity of accused, had lent the amount and accused has given two post dated cheques. Of course, accused took a plea that she has issued cheques to the mother of P.W.1, who was doing illegal chit transactions. Since that fact has not been established, I am not inclined to consider the same at this juncture. So, even going by the compliant allegations, the amount was lent by complainant as hand loan and accused has given two post dated cheques in discharge of the said hand loan. In that back drop, without

The complainant claims that the cheques were dishonored for the reason that the account was closed as stated supra. From mere closure of the bank account by accused, one cannot infer that accused had dishonest intention to cheat complainant. Hence, as rightly observed by both the Courts below, complainant failed to satisfy the crucial ingredient of Section 415 I.P.C i.e., accused had dishonest intention even at the stage of inception. Without establishing the same, complainant cannot seek for conviction of the accused for the offence under Section 420 I.P.C.

6. I find no merits in the Criminal Revision Case and the same is accordingly dismissed confirming the judgment dated 29.03.2012 in Criminal Appeal No.384 of 2011 on the file of the learned Metropolitan Sessions Judge, Hyderabad.

As a sequel, miscellaneous petitions pending, if any, shall also stand dismissed.

U.DURGA PRASAD RAO, J

Date: 09.11.2018
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