THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.1084 OF 2014

JUDGMENT:

This Criminal Appeal, under Section 378(4) of the Code of Criminal Procedure, 1973, is filed by the appellant/complainant, challenging the judgment, dated 25.11.2011, passed in S.T.C. No.44 of 2009 by the learned Special Judicial Magistrate of First Class for Excise, Chittoor, whereby and where-under, the learned Magistrate found respondent No.2/accused not guilty for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'Act, 1881').

2. Heard Sri Bussa Rajendra, learned counsel for the appellant/complainant, learned Additional Public Prosecutor representing the 1st respondent-State, and Sri T.C. Krishnan, learned counsel for respondent No.2/accused, and perused the record.

3. The appellant herein is the complainant in S.T.C. No.44 of 2009 before the Magistrate and respondent No.2 is the accused. For the sake of convenience, the parties are hereinafter referred to as they were arraigned in S.T.C.

4. The learned counsel for the appellant/complainant would contend that an amount of Rs.1,10,000/- was due by the accused towards balance sale consideration in respect of sale of Ac.0.50 cents of land in Survey No.262/2, situated at Thenabanda village Account, Chittoor, purchased by the accused and his wife. There was proper legal notice. There is no denial

of signature by the accused on the subject cheque. The learned Magistrate erroneously dismissed the complaint, and ultimately prayed to set aside the impugned judgment and convict and sentence the accused for the offence punishable under Section 138 of the Act, 1881.

5. The learned counsel for the accused would contend that the subject cheque was obtained in the name of 'Baba Auto Consultancy' for other purpose but not the purpose as alleged by the complainant; that the subject cheque was utilized by the complainant only for the purpose of filing the present complaint. In fact, entire sale consideration amount of Rs.16,000/- in respect of purchase of Ac.0.50 cents of land was paid and the same was acknowledged under the registered sale deed, Ex.B.1. The Magistrate has rightly dismissed the impugned complaint holding that there was no legally enforceable debt, and ultimately prayed to sustain the judgment of the trial Court.

6. In view of the above submissions, the points that arise for determination in this appeal are as follows:

i. **Whether the appellant/complainant proved the legally enforceable debt against the 2nd respondent/accused?**

ii. **Whether the 2nd respondent/accused issued Ex.P.2 cheque in favour of the appellant/complainant for discharging the legally enforceable debt and the said cheque was dishonoured for want of sufficient funds in the account of the 2nd respondent/accused?**

iii. **Whether the judgment of the Court below is liable to be confirmed/set aside?**

iv. **To what result?**

POINT Nos.(i) and (ii):-

7. To substantiate the case of the appellant/complainant, the appellant/complainant herself deposed as P.W.1 and also examined PWs.2 and 3 and got marked Ex.P.1-Agreement, dated 23.08.2006, Ex.P.2-Cheque bearing No.279650, dated 22.10.2006, Ex.P.3-return memo, dated 28.10.2006, Ex.P.4-legal notice, dated 03.11.2006, and Ex.P5.5-served acknowledgment, dated 07.11.2006. On behalf of respondent/accused, he was examined as DW.1 and got marked Ex.B.1-sale deed, dated 23.08.2006.

8. The specific case of the complainant is that the subject cheque for Rs.1,10,000/- was given by the accused towards balance sale consideration for the agricultural land purchased in the name of wife of the accused under Ex.B.1, registered sale deed. Ex.B-1/registered sale deed reveals that Ac.0.50 cents of agricultural land was purchased by the wife of the accused from the complainant for a total sale consideration of Rs.16,000/- was paid before the execution and registration of said sale deed. So, Ex.B-1, registered sale deed, in question, does not reveal that a sum of Rs.1,10,000/- was due by the vendee in favour of the vendor i.e., complainant herein. Therefore, Ex.B.1 falsifies the contention put forth by the complainant that the subject cheque for Rs.1,10,000/- was given towards balance sale consideration due under Ex.B.1, registered sale deed. These circumstances would amply make clear that there was no legally enforceable debt and the questioned cheque was given in discharge of the same. Under these circumstances, it can be culled out from the record that no case is made out by the appellant/complainant against respondent

No.2/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Accordingly, these two points are answered in favour of the 2nd respondent/accused and against the appellant/complainant.

POINT No.(iii):

9. The findings of the learned Magistrate are in consonance with the evidence on record. There is no infirmity in the judgment under challenge. The appeal is devoid of merit and is liable to be dismissed.

POINT No.(iv):

10. In the result, the present Criminal Appeal is dismissed, confirming the judgment, dated 25.11.2011, passed in S.T.C. No.44 of 2009 by the learned Special Judicial Magistrate of First Class for Excise, Chittoor acquitting respondent No.2/accused.

As a sequel, Miscellaneous Applications, if any, pending in the Criminal Appeal, stand closed.

Dr. SHAMEEM AKTHER, J

December 19, 2018
Mgr