SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1031 of 2006

ORDER:

This appeal is preferred by the appellant, who is the 1st respondent before the court below, aggrieved by the judgment dated 05.10.2004, passed by the III Additional Metropolitan Sessions Judge, Hyderabad, in Crl.A.No.107 of 2004, which was allowed setting aside the conviction and sentence imposed against the 1st respondent/accused by the XVII Metropolitan Magistrate, Hyderabad, passed in C.C.No.1000 of 2000, dated 26.03.2004.

2. The facts, in brief, are as follows:

On 27.03.2000, accused purchased transformer, stabilizer and other electric fittings from the complainant firm, for a total consideration of Rs.1,00,000/- and issued cheque for Rs.75,000/- drawn on the State Bank of India, Adarshnagar towards part payment, in discharge of the liability and on 29.03.2000 the appellant/accused paid a sum of Rs.25,000/- by cash and appellant/accused requested the complainant to present the said cheque in the month of August, 2000. Accordingly, the complainant deposited the said cheque in the month of September, but it was dishonoured on the ground of insufficient funds. Thereby, the complainant issued a reply notice on 03.10.2000, calling upon the accused to pay the amount covered under the cheque. The accused received the notice but did not make any payment.

3. The trial court took the case on file for the offence under Section 138 of N.I.Act and after complying with all the legal formalities conducted the trial of the case and passed the judgment in favour of the complainant finding the accused guilty of the offence under Section 138 of N.I.Act. The appellate court reversed the said finding and held that the complainant could not prove that the cheque was issued for a legally enforceable debt. The admitted fact in this case is that the cheque was issued by the accused for a sum of Rs.75,000/- dated 27.03.2000. On 30.03.2000, under Ex.D1, an amount of Rs.25,000/- was paid to the accused. The court below by considering that this amount is a part of the amount, which was mentioned in the cheque held that the amount under the cheque does not reflect the correct liability of the accused and hence, cannot be said that the cheque was issued towards a legally enforceable debt.

4. Heard the counsel for the appellant. Notices were sent to the 1st respondent but they were returned as unclaimed. Hence, deeming it as service of notice, the submissions of the counsel for the appellant are heard.

5. The counsel for the appellant contends that a sum of Rs.25,000/- paid on 30.03.2000 is not part of the amount contained under the cheque, but unfortunately he does not have any support for the argument that he extends. Though his argument is that subsequent to the purchase, for which the cheque was issued, there were subsequent purchases and the

accused paid Rs.25,000/- towards subsequent purchases and that too in cash.

6. The argument of the appellant's counsel fails on two counts. One being, that when a cheque was decided to be taken for one purchase, the reason for taking cash for the subsequent purchase is not properly explained and the second reason is that when the amount for the earlier transaction is still due, it cannot be expected that the complainant could receive cash for the subsequent transaction, without setting it off for the earlier transactions. There are absolutely no supporting documents evidencing the subsequent purchases.

7. Hence, without there being any supporting material and without the above two doubts being clarified, this court is not in a position to arrive at any different conclusion than what was arrived at by the appellate court. In view of the above, the appeal fails and is liable to be dismissed.

Accordingly, the Criminal Appeal is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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T. RAJANI, J

August 13, 2018
LMV