

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL APPEAL No.1501 of 2007

JUDGMENT:

This Criminal Appeal is filed by the complainant aggrieved by the judgment dated 31.07.2007 in CC No. 536 of 2003 passed by the learned IV Additional Chief Metropolitan Magistrate, Hyderabad dismissing the complaint filed by the complainant under Section 138 of the Negotiable Instruments Act, 1881.

2. Since it is an old matter of the year 2007 it was posted under the caption for dismissal. However, there is no representation for the appellant/complainant today.

3. A perusal of the impugned judgment would show that the appellant/complainant filed the complaint on the allegations that he lent a sum of Rs. 1,00,000/- to the respondent/accused under promissory note dated 20.01.2003 but inspite of repeated demands the accused did not pay the amount and finally he issued a cheque bearing No. 998768 dated 19.4.2003 towards discharge of the debt. However, on presentation of the cheque for collection, the same was returned unpaid with endorsement 'account closed'. Thereupon, the complainant issued statutory notice dated 12.5.2003 and the same was

served on the accused on 14.5.2003. However, the accused did not pay the amount. Hence, the complaint.

4. The trial went on. The complainant was examined as PW-1 and Exs. P1 to P5 were marked on his behalf. Ex. P1 is the cheque bearing No. 998768 dated 19.4.2003 for Rs. 1,00,000/-, Ex. P2 is the cheque return memo, Ex.P3 is the office copy of legal notice date 12.5.2003, Ex. P4 is the postal acknowledgement and Ex.P5 is the promissory note. The accused was examined as DW-1 and documents produced by him were marked as Exs. D1 to D4. Ex. D1 is the chit receipt for Rs. 47,000/- issued by the original complainant, Ex.D2 is the chit receipt for Rs. 50,000/- issued by the complainant, Ex.D3 is the original legal notice and Ex. D4 is the medical certificate of the accused.

5. The defence plea of the accused is that he borrowed Rs. 1,00,000/-from the original complainant K. Anjaiah in the month of February 2003 by executing un-dated pro-note and issued a blank cheque as a security. Thereafter, he repaid Rs. 97,000/- under Exs. D1 and D2 receipts and he was due to pay only Rs. 3,000/-. Therefore, the question of issuing of Ex. P1 cheque in April 2003 does not arise. He pleaded that the complainant fabricated Exs. P1 and P5 taking advantage of un-dated pro-note and also the blank cheque available with him and filed a false case. The trial Court observed that when

the accused took a plea that undated pro-note and blank cheque issued by him were tampered and materially altered the complainant as a custodian of Ex. P5 was bound to prove those circumstances particularly regarding the endorsement made on rear side of Ex.P5 was cancelled and by whom it was cancelled. He has also to prove Exs. P1 and P5 were not tampered and materially altered. The trial Court noticed that the complainant has failed to place any satisfactory evidence except stating that the endorsement on the rear side of Ex. P5 was cancelled by the accused himself and he took the said plea only during cross examination. The trial Court further observed that the said explanation offered by the complainant is not believable as Ex. P-5 was in the custody of complainant till it was filed into the Court and therefore, there was no possibility or access for the accused to cancel the endorsement made on the rear side of Ex. P-5 without the knowledge of the complainant. For another reason also, the trial Court held explanation of complainant cannot be accepted. Since the accused was a debtor under Ex.P5, there was no need for him to cancel the part payment endorsement made on the rear side of Ex.P5 because the said endorsement would support his plea of discharge to some extent besides Exs. D1 and D2 receipts. Ultimately, the trial Court held that the complainant had miserably failed to prove his case against the accused and accordingly acquitted the accused.

6. I have meticulously gone through the judgment and record. As rightly observed by the trial Court, the complainant being custodian of Ex. P5 pro-note, failed to give cogent explanation as to why payment endorsed on the reverse side of the pro-note was cancelled and under what circumstances it was cancelled. The endorsement supports the defence plea of the accused and gives strength to Exs. D1 and D2 payment receipts. So the complainant failed to prove his case against respondent.

7. I find no merits in the appeal and accordingly, the Criminal Appeal is dismissed confirming the judgment dated 31.7.2007 of the trial Court in C.C No. 536 of 2003. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.



U. DURGA PRASAD RAO, J

Date: 26.06.2018
KA