HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No. 959 OF 2006

JUDGMENT:

1. The appellant aggrieved by the judgment dated 23.04.2002 passed in CC.No.194 of 1999 on the file of learned XIV Metropolitan Magistrate, at Hyderabad, acquitting Respondents 1 to 3/Accused 1 to 3 for the offence punishable under Section 138 of the Negotiable Instruments Act, preferred present Criminal Appeal.

2. The contention of the appellant is that the trial Court erred in holding that the authorization under Ex.P.1 given to the appellant is not proper and further that the complainant failed to prove the guilt of legally enforceable debt against the respondents. It is contended that the burden of proof that there is no existing enforceable debt will lie on the accused and the accused have to rebut the said presumption by adducing evidence from their side. It is contended that the trial Court erred in holding that Exs.P.11 to P.14 which are postal acknowledgment cards are forged and fabricated, because they were not disputed nor there was any suggestion disputing the respective addresses given by the accused to P.W.1. It is further contended that the finding of the trial Court that there is no explanation offered for abnormal delay in filing and marking of the documents under Exs.P.15 to P.17 is erroneous and against its earlier orders.

3. None appeared for the appellant having submitted the arguments in part on earlier occasion; hence, this Court reserved the matter for judgment since the matter is of the year 2006.

4. Now the point that arose for determination is

"*Whether findings of the trial Court are legal, valid and can be sustained*?"

Brief facts of the prosecution case are that: The complainant who is the appellant herein was the manufacturer of edible oils and other allied products. A.1 is a company represented by A.2 to A.4 and it is the customer of the complainant. During the course of transactions, the accused fell due an amount of Rs.3,91,600/-, for which, the accused issued a cheque bearing No.208893, dated 30.4.1999 drawn on Vyasya Bank Limited, Abid Road Branch, Hyderabad towards repayment of the said due amount. A.3 and A.4 are the signatories to the said cheque and the same was issued by them under the instructions of Accused No.2 who is the Managing Director of A.1-Company.

When the cheque was presented on 20.07.1999, the same was dishonoured by the bankers of the accused with the remark- 'insufficient funds', as per Ex.P.5 bank memo. On 11.8.1999, legal notice was issued, which was received by the accused, but the accused neither gave reply nor repaid the alleged due amount.

5. The case against Accused No.4 was separated and the trial Court proceeded against A.1 to A.3.

6. During trial, P.W.1 was examined in support of the appellant/complainant and got marked Exs.P.1 to P17 on its behalf. No oral or documentary evidence was adduced in support of the respondents/accused.

7. P.W.1 is Mahaveer Lohiya, complainant, who was examined as P.W.1. He produced Ex.P.1 authorization letter showing that he had been authorized to represent the complainant-Company and give evidence on its behalf. The trial Court having gone through Ex.P.1 came to the conclusion that the contents in Ex.P.1 do not have any connection with the affairs or activities of the complainant, a partnership firm consisting of six partners. The partnership deed, Ex.P.15 shows that all the partners are described as working partners. Neither the complaint nor the material on record would disclose designation of the complainant-representative in the appellant-company. As such, the complainant could not validly represent the complainant firm, since because, P.W.1 being the person not with any designation or has any connection on record with the affairs of the firm. Thus going by, it was observed that any authority to the third person would not validly launch the prosecution. More so, Ex.P.1 does not contain the date and that the material columns were filled in subsequent to the preparation of the document by typing. More so, it does not confer any specific types of transactions or cheques in respect of which the prosecution has to lie. Therefore the trial Court rightly came to the conclusion that Ex.P.1 is defective even on several technical points. Therefore the

person who filed the complaint on behalf of the appellant-company herein has no proper authorization so as to launch prosecution.

8. With regard to the legal and enforceable debt in respect of the cheque Ex.P.2, the evidence of P.W.1 is that the accused fell in due the amount of Rs.3,91,600/- and issued cheque bearing No.208893, dated 30.04.1999 drawn on Vysya Bank, Abid Road Branch, Hyderabad and signed by A.3 and A.4 and it which was issued by them under the instructions of A.2. During the cross examination, it is admitted by P.W.1 that except Ex.P.4, he did not file any other document in respect of the transactions relating to the cheque. There is a suggestion that Ex.P.2 cheque and Exs.P.3 and P.4 letter heads were obtained by the staff in bank, and the same was denied. The trial Court having considered the evidence and Ex.P.1 document came to the conclusion that neither in the complaint allegations nor in the evidence, P.W.1 stated the specific transactions relating to the cheque. It was only stated that the accused fell due the amount during the course of the transactions. It is to be seen that the complainant is a partnership firm and is duty bound under law to maintain records and accounts of the transactions and the entries with regard to the alleged transactions with the accused shall have in such record, but no such record was produced and transaction was proved. In the cross examination, P.W.1 stated that Ex.P.4 proves the liability and that except Ex.P.4, he did not file any other document in respect of the transaction. When it is verified, Ex.P.4 did not contain any specific details of transaction or amount due, but had only requested the complaint firm

to bear with A.1 until mid June-- end of June 1999 for settlement of all dues. That it self does not prove the liability in question. In those circumstances, the trial Court came to the conclusion that the absence of any documentary proof as regards the transaction to support the liability and to prove the consequential legally enforceable debt is a strong ground to rebut the statutory presumption available to the complainant under law. Thus the appellant/complainant failed to produce any cogent evidence to prove the legally enforceable debt or consequential liability in respect of the cheque in question.

9. Further the trial Court observed that the entries in Ex.P.2 cheque were made typewritten. There is a suggestion to P.W.1 that it was obtained in blank and the entries were filled in and presented in the bank. There is force in such suggestion. Further it is to be seen that Exs.P.11 to P.13--postal acknowledgments do not contain signature of the respective accused persons. They also do not contain the stamp of the destination post office and seal of the accused company.

10. Thus, having considered the evidence on record, the trial Court rightly came to the conclusion that the appellant-complainant failed to prove the guilt of the accused 1 to 3 beyond all doubts and thereby acquitted the accused of the offence punishable under Section 138 of the NI Act.

11. In view of the foregoing scrupulous and meticulous discussion of the evidence on record, this Court is of the considered

view that the findings of the trial Court are based on material on record, legal, valid and do not suffer from any legal infirmities warranting interference by this Court.

12. In the result, the Criminal Appeal is dismissed while confirming the judgment dated 23.04.2002 passed in CC.No.194 of 1999 on the file of learned XIV Metropolitan Magistrate, at Hyderabad.

13. Miscellaneous petitions pending consideration if any in the criminal appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI

DATED 11th OCTOBER, 2018.
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