

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL APPEAL No.1525 OF 2006

JUDGMENT:

This criminal appeal is filed by the complainant aggrieved by the judgment dated 07.08.2006 in C.C.No.2070 of 2003 passed by the learned II Metropolitan Magistrate, Cyberabad, Ranga Reddy District, dismissing the complaint filed by the complainant under Section 138 of N.I.Act.

2. This appeal is filed in the background of the following factual matrix:

(a) The complainant's case is that the father of the complainant has been working as a Clerk in Andhra Bank Employees Co-operative Bank Limited and accused also works in the same bank and due to that acquaintance, the accused requested for advancing a sum of Rs.1,30,000/- on 28.02.2001 and the complainant advanced said amount, for which the accused executed two promissory notes i.e., one for Rs.90,000/- and another for Rs.40,000/- and on persuasion of the complainant, the accused issued a cheque for Rs.50,000/- on 01.07.2003, drawn on ABE Cooperative Bank, Rajahmundry, towards part payment of the loan amount. When the complainant deposited the cheque in his bank, the same was returned with the endorsement 'funds insufficient'. The complainant issued a legal notice to accused, but he

intentionally avoided receiving the same. Hence, the complaint.

(b) The complaint was taken on file and during trial, the complainant was examined as P.W.1 and his documents were marked as Exs.P1 to P10. The accused was examined as D.W.1 and his documents were marked as Exs.D1 and D2.

(c) The defence of accused is that he never borrowed Rs.1,30,000/- from complainant nor executed any pro-notes in his favour and issued cheque for Rs.50,000/- in part payment of the said amount. His case is that in the year 2003, while he was working at Rajahmundry as Clerk in Andhra Bank Employees Co-operative Bank Limited, the father of P.W.1 brought the police to his office and on his threat, he signed on blank promissory notes and also issued blank cheque to him. Thus, the accused denied to have issued Ex.P1 cheque, but, admitted his signature on Ex.P1 cheque.

(d) Basing on the above defence, the accused argued before the lower court that there was no legally enforceable debt within the ambit of Section 138 of N.I.Act and therefore, the criminal proceedings are not maintainable. He further argued that the suit filed by P.W.1 for recovery of the amounts including the cheque amount was dismissed and on that count also, the criminal case is not maintainable. He further

argued that the complainant and his family members are money lenders and when there is no legally recoverable debt, criminal proceedings cannot be maintained.

(e) Per contra, the complainant urged before the trial court that though the civil court gave a finding that consideration was passed to the accused, however, dismissed the suit on the technical ground that the money lending license was not produced before the court and therefore, the dismissal of the civil suit has no bearing in the criminal proceedings. He further argued that in the instant case, the accused admits his signature on Ex.P1 cheque and also on Exs.P3 and P4 promissory notes and his plea was that they were forcibly obtained by the father of P.W.1 and therefore, the presumption under Section 139 of N.I.Act would squarely follow in which case, the burden would rest on the accused to dispel the presumption, but, he failed to rebut and therefore, he can be convicted.

(f) A perusal of the judgment of the trial court would show that it observed that as per Ex.P10, the complainant obtained money lending license from M.R.O., Saroornagar, on 28.02.2003. However, the two pro-notes covered by Exs.P3 and P4 were dated 28.02.2001 i.e., much prior to Ex.P10 license. The Ex.P1 cheque was no doubt issued on 01.07.2003 i.e., subsequent to the money lending license. The trial court observed that the cheque was issued in

connection with the pro-note debt and therefore, technically speaking, by the date of two pro-notes, the complainant was not holding valid money lending license and therefore, the debt was not a legally enforceable one by the date of Exs.P3 and P4. The trial court further observed that since the debt was not legally enforceable, the cheque cannot be held to be a valid one in the eye-of-law. In that regard, the trial court has taken into consideration the judgment of this Court in ***M/s.Baba Finance Corporation v. Mohd. Nayeem and Another***¹, wherein it is held thus:

“Para 8: As I have already noted above, the explanation to Section 138 of the Negotiable Instruments Act provides that the debt for which the cheque was issued and bounced back should be a cheque relatable to a debt or liability which is legally enforceable. Phrase “legally enforceable” found under Explanation to Section 138 is the one applicable to both debt and other liability. The legally enforceable debt is one which a person can sue for the same before the competent Court and realise it. For any reason, if any, a person is incapacitated either by law or procedure to institute a suit before an appropriate Court and obtain relief regarding the suit in question such a debt is not legally enforceable.....”

(g) The trial court ultimately dismissed the complaint holding that there was no legally enforceable debt as on the

¹ 1997(1) ALD (Crl) 719 (A.P.)

date of execution of Exs.P3 and P4 promissory notes. Hence, the present appeal is preferred.

3. It is argued by the learned counsel for the appellant that the trial court erred in dismissing the suit on the sole ground that the complainant did not possess valid money lending license by the date of Exs.P3 and P4 promissory notes. Learned counsel would argue that the accused failed to produce any tangible evidence that the complainant is a regular money lender within the ambit of A.P.(TA) Money Lenders Act and except a stray admission of the complainant, the accused has not produced any other cogent material to hold that the complainant is a regular money lender. Therefore, the trial court ought not to have dismissed the complaint on that ground. In support of his argument, learned counsel relied upon the decision of this Court in ***Ratakonda Raghu Naidu v. Kolla Sivaram Prasad and another***². He thus prayed to allow the appeal and set aside the judgment of the trial court.

4. There is no representation for respondent. Heard learned counsel for the appellant/complainant.

5. The point for determination in this criminal appeal is: 'whether the judgment of the trial court is factually and legally sustainable?'

² 2003 (2) ALD (CrL.) 956 (AP)

6. As can be seen from the impugned judgment, the trial court dismissed the appeal on the prime finding that the complainant is a money lender and as on the date of Exs.P3 and P4 promissory notes, he was not holding money lending license and Ex.P10 was obtained by him long after Exs.P3 and P4 promissory notes and therefore, the debt under Exs.P3 and P4 is not a legally enforceable debt.

7. In view of the above findings, the questions that would arise are whether the appellant/complainant is a money lender within the ambit of A.P.(TA) Money Lenders Act and if so, whether he possessed valid license to conduct the business and whether the cheque issued in part discharge of the said pronotes debt can be termed as legally enforceable debt.

8. As can be seen from the cross-examination of D.W.1, the accused admits the signature on Ex.P1 cheque. Of course, his case is that the promissory notes and cheque were obtained by force by the father of the complainant. Be that it may, since the accused admits his signature on Ex.P1 cheque, the presumption under Section 139 N.I.Act follows **{Rangappa v. Srimohan [(2010) 11 SCC 441]}**. Therefore, the burden is on him to substantiate his defence that the complainant is a money lender and the debts are not legally enforceable debts as he was allegedly not holding valid money lending license by the date of Exs.P3 and P4. To discharge

his burden, the accused filed Exs.D1 and D2. Ex.D1 is the certified copy of deposition of the complainant as P.W.1 in O.S.No.42 of 2004. In the cross-examination, he stated that he has been carrying on money lending business. He further admitted that it was a fact that his mother does similar business and he obtained money lending license either in 2002 or in 2003. Ex.D2 is the certified copy of judgment in O.S.No.42 of 2004 on the file of IV Additional Senior Civil Judge, Fast Track Court, Ranga Reddy District. The said suit was filed by the complainant against the accused for recovery of Rs.1,30,000/- including the present cheque amount. In that suit, one of the issues framed by the said court was whether the plaintiff is a money lender as averred by the defendant. The said court while dealing with issue No.2, referred to Section 2(7) of A.P.(Telanga Area) Money Lenders Act, 1349 Fasli, which dealt with the definition of money lender and observed that P.W.1 admitted that he carries on money lending business, but, he did not produce the license and the plaintiff is a money lender within the definition of Section 2(7) of the Act. The trial court ultimately dismissed the suit. Thus, the accused in discharge of his burden and to establish that the complainant is a money lender produced Exs.D1 and D2. Apart from that, in the cross-examination of P.W.1, the accused elicited to the following effect:

“My mother also lend money to others. I am having money lending license from the year 2003.”

9. In further chief-examination, P.W.1 himself stated as follows:

“ I am having money lending license from M.R.O., Saroornagar and I am filing the same into court. Ex.P10 is the money lending license and I took it on 28.02.2003 and I am renewing the same for every year. I also renewed for this year by obtaining challan.”

10. Thus, the conjunctive study of the Exs.D1 and D2 and also the deposition of P.W.1 would give an understanding that the complainant is a regular money lender, within the ambit of Section 2(7) of A.P.(TA) Money Lenders Act. Since Exs.D1 and D2 originated from the civil suit between the same parties, those documents are relevant for the purpose of determining the fact about the status of the complainant. In that view, the decision relied upon by the complainant in ***Ratakonda Raghu Naidu's case (referred supra)*** has no application. In that case, it was observed that ‘it was not enough merely to show that a person has lent money at remunerative rate of interest, but he has continued the transactions and only such person whose regular business is to advance moneys would come within the definition of “money-lender”, and the person who advances moneys casually does not fall within this definition is on the person who asserts it.’.

11. As already stated, the above decision will not advance the cause of the appellant/complainant because, in the instant case, the accused produced cogent evidence to arrive at a conclusion that the complainant was a regular money-lender.

12. A perusal of Ex.P10 would show that as rightly observed by the trial court, the money lending license was obtained by the complainant from the M.R.O., Saroornagar office on 28.02.2003, whereas, the two promissory notes i.e., Exs.P3 and P4 were dated 28.02.2001. Therefore, by the date of debt of Exs.P3 and P4 promissory notes, the complainant though was a money-lender but not having a valid money lending license. In that view, the debts covered by Exs.P3 and P4 cannot be regarded as legally enforceable. Since Ex.P1 cheque was allegedly issued in part payment of the debt covered by Exs.P3 and P4, the same cannot be said to be in due discharge of any legally enforceable debt. In this regard, the decision relied upon by the trial court in ***M/s.Baba Finance Corporation v. Mohd. Nayeem and Another (referred supra)***, squarely applies to the case on hand. Therefore, the trial court was right in coming to a conclusion that there was no legally enforceable debt in existence to back up Ex.P1 cheque. Hence, the trial court has rightly dismissed the complaint. I see no perversity or illegality in the judgment impugned.

13. In the result, this criminal appeal is dismissed by confirming the judgment of the trial court. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

U.DURGA PRASAD RAO, J

31.07.2018

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