

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.221 of 2013

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 20.11.2012, passed in Criminal Appeal No.72 of 2012 by the I Additional Sessions Judge, Khammam, whereby, the conviction and sentence recorded against the 2nd respondent herein/accused for the offence under Section 138 read with 142 of the Negotiable Instruments Act, 1881, by the Judicial Magistrate of First Class, Special Mobile Court, Khammam, vide judgment, dated 28.06.2012, passed in C.C.No.387 of 2005, was set aside.

2. Heard the learned counsel for the appellant/complainant, the learned Additional Public Prosecutor representing the 1st respondent-State and perused the record. There is no representation on behalf of the 2nd respondent/accused.

3. The learned counsel for the appellant/complainant would submit that two cheques, dated 07.06.2002, were issued by the 2nd respondent/accused in favour of the appellant/complainant to discharge the legally enforceable debt. When the said cheques were presented in the bank for payment on 06.08.2002, they were dishonoured for want of sufficient funds in the account of the 2nd respondent/accused. Thereafter, the appellant/complainant got issued a legal notice, dated 05.12.2002 to the 2nd respondent/accused demanding payment. Even then, the amount covered under the said two cheques was not paid by the 2nd

respondent/accused in favour of the appellant/claimant. There is cogent and convincing evidence to substantiate the same. The Court below erroneously concluded that without impleading the firm, its partner (2nd respondent/accused) alone cannot be prosecuted and erroneously allowed the appeal by setting aside the conviction and sentence recorded by the trial Court against the 2nd respondent/accused for the offence punishable under Section 138 read with 142 of the Negotiable Instruments Act, 1881, and ultimately prayed to set aside the judgment under challenge and restore the judgment passed in the Calendar Case by the trial Court.

4. In view of the above submissions, the only point that arises for consideration in this Criminal Appeal is whether the firm by name Sri Ramakrishna Traders, on whose behalf the 2nd respondent/accused issued the subject cheques in favour of the appellant/complainant in the capacity as its partner, is a necessary party to the litigation?

5. As per the evidence and record placed before this Court, particularly the subject cheques, dated 07.06.2002, which are marked as Ex.P.3 and Ex.P.4, were issued by the 2nd respondent/accused in the capacity of a partner of a firm by name Sri Ramakrishna Traders. Admittedly, the firm, i.e., Sri Ramakrishna Traders is not made an accused in this case. Only the 2nd respondent herein, who is a partner of the said firm, is made as accused in this case. The Court below elaborately dealt with these aspects and relying on a judgment of this Court in P.L.K.Prasad and another Vs. C.Pratap Reddy¹, held that the subject cheques, which were marked as Ex.P.3 and Ex.P.4, were issued by the 2nd

¹ 2011 (1) JTC Page 22

respondent/accused in the capacity of a partner of Sri Ramakrishna Traders but not in his personal capacity, and that the firm Sri Ramakrishna Traders is a necessary party to the litigation and that the said firm ought to have been prosecuted. It is settled law that without arraying the firm as an accused, the prosecution of a partner of the said firm for the offence under Section 138 of the Negotiable Instruments Act, 1881, is not maintainable, particularly when the subject cheques were issued on behalf of the firm by the 2nd respondent/accused. This Court is in agreement with the findings of the Court below. There is no infirmity in the order under challenge. The appeal is devoid of merit and is liable to be dismissed.

6. In the result, the appeal is dismissed, confirming the judgment, dated 20.11.2012, passed in Criminal Appeal No.72 of 2012 by the I Additional Sessions Judge, Khammam.

Pending Miscellaneous Petitions, if any, shall stand closed.

15th December, 2018
Bvv

Dr. SHAMEEM AKTHER, J