

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.117 OF 2011

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 14.05.2010, passed in Criminal Appeal No.71 of 2007 by the learned Principal Sessions Judge at Nalgonda, whereby, the conviction and sentence recorded against respondent No.2 herein/accused for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'), by the learned Special Judicial First Class Magistrate (For Prohibition & Excise Offences), Nalgonda *vide* order, dated 21.06.2007, passed in C.C.No.494 of 2004, was set aside.

2. Heard the learned counsel for the appellant/complainant. In spite of the matter being posted under the caption "For Orders", there is no representation for respondent No.2/accused. Perused the record. As the matter pertains to the year 2011, the same can be disposed of basing on the material available on record.

3. Learned counsel for the appellant/complainant would contend that both the Courts below held that the accused had given Ex.P-2 – cheque dated, 20.05.2004, in discharge of his debt obtained by him under Ex.P-1 - promissory note, dated 19.07.2003, from the complainant; that there is ample evidence to substantiate the dishonour of the cheque for want of sufficient money in the account of the accused; that there is also record to show the issue and service of notice on the accused; that all the requirements under the Negotiable Instruments Act are proved, in spite of that, the appellate Court had set aside the conviction and

sentence recorded under Section 138 of the Act against the accused by the learned Special Judicial First Class Magistrate (For Prohibition & Excise Offences), Nalgonda *vide* order, dated 21.06.2007, passed in C.C.No.494 of 2004, which is erroneous, and ultimately, prayed to set aside the judgment under challenge and restore the judgment passed in the Calendar Case.

4. In view of the submission of the learned counsel for the appellant, the point that arises for determination in this appeal is:

“Whether the judgment, dated 14.05.2010, passed in Criminal Appeal No.71 of 2007 by the learned Principal Sessions Judge at Nalgonda is liable to be set aside?”

5. **POINT:-**

As seen from the entire evidence and documents placed on record, the complainant is a financial institution. It is dealing in lending money to purchase automobiles and other vehicles. As seen from the evidence on record, the appellant had obtained license to lend money from the competent authority on 16.11.2003 and it was valid up to 15.11.2004. Thereafter, the license was renewed from 16.11.2004 to 15.11.2005. Ex.P-1 – promissory note where the borrowing of Rs.50,000/- is set up by the complainant was executed on 19.07.2003. This is much before the complainant obtaining money lending license. Moreover, the complainant is a partnership firm. It was registered under the original of Ex.P-9 on 13.08.2001. Now, there is no dispute with regard to the complainant indulging in money lending business. There is no money lending business by the complainant firm on the date of alleged execution of promissory note on 19.07.2003. In such event, the money transaction alleged to have been entered in between the parties is unenforceable. On the other hand, it can be

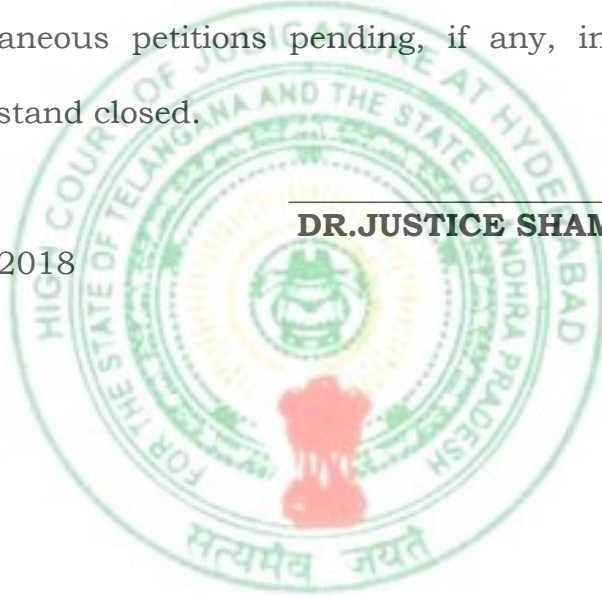
safely concluded that there is no legally enforceable debt by the complainant from respondent No.2/accused. The same is the finding recorded by the appellate Court. There is no infirmity in the findings recorded by the appellate Court and there is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

6. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 14.05.2010, passed in Criminal Appeal No.71 of 2007 by the learned Principal Sessions Judge at Nalgonda.

7. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 20.12.2018
AMD



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