

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.120 OF 2015

JUDGMENT:

This Criminal Appeal, under Section 378 (4) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed by the appellant-complainant aggrieved by the judgment, dated 14.11.2014, rendered in Criminal Appeal No.358 of 2014 on the file of the I Additional Metropolitan Sessions Judge, Hyderabad, whereby and whereunder respondent No.1/accused was acquitted under Section 386 (b) (i) of Cr.P.C. for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'N.I.Act').

2. Heard the learned counsel for the appellant/complainant and perused the record.

3. In spite of service of notice, there is no representation on behalf of the respondent-accused.

4. Learned counsel for the appellant would contend that the accused borrowed an amount of Rs.9,10,000/- on 23.01.2008 from the complainant without passing any receipt or promissory note, but he only gave a blank cheque signed by him belonging to Syndicate Bank, New Nallakunta Branch, Hyderabad. On the instructions of the accused, the cheque was filled up by the complainant and it was presented to the Bank and the said cheque was returned for want of sufficient funds in the account of the accused. There is evidence of PW.1-complainant and P.W.2-P.Deekshathi to establish borrowing of Rs.9,10,000/- from the complainant and issuing Ex.P.1-cheque. On return of the cheque for want of sufficient funds in the account of the accused, the

complainant issued a legal notice as contemplated under Section 138 (b) of N.I. Act granting 30 days time to the accused to pay the cheque amount. In spite of the same, the accused did not pay the amount. So, the complainant filed the complaint. The Trial Court held that the accused owe Rs.9,10,000/- to the complainant and the subject cheque marked as Ex.P.1 was given towards discharge of the same and rightly convicted and sentenced the accused. However, the first appellate Court held that there was no legally enforceable debt and Ex.P.1 cheque was not given to discharge the debt and erroneously dismissed the appeal and ultimately prayed to set aside the impugned judgment and restore the judgment of the trial Court.

5. To constitute an offence under Section 138 of N.I. Act, the complainant has to prove that there is legally enforceable debt or liability; that the subject cheque was issued by the accused in discharge of the same; the said cheque should have been dishonoured for want of sufficient funds in the account of the accused; issuance of statutory notice under Section 138 (b) of N.I. Act demanding repayment of the cheque amount; and failure on the part of the accused to repay the same.

6. The case of the complainant is that on 23.01.2008 he gave an amount of Rs.9,10,000/- to the accused to develop his business and no receipt was passed or promissory note was given to the complainant by the accused. However, it is contended that Ex.P.1 cheque was given, which was blank according to the complainant. The accused has denied any borrowing in between him and the complainant and also contended that the alleged borrowing put up

by the complainant is time barred. Even if the so called monetary transaction said to have been taken between the parties on 23.01.2008 is taken as true, the subject cheque (Ex.P.1) dated 21.11.2011 is more than three years from the date of borrowing set up by the complainant. Hence, it would not come within the period of three years to enforce a legally enforceable debt. Furthermore, it has been averred and admitted by the complainant that a blank cheque was given. Therefore, it cannot be held that a valid cheque was given to discharge a legally enforceable debt, the defence set up by the accused is acceptable.

7. Under these circumstances, there is no evidence of enforceable debt as on the date of presentation of the cheque. Further more, as Ex.P.1-cheque was a blank one, it cannot be held that it was given to discharge a legally enforceable debt. On both these counts, the appeal fails.

8. Accordingly, the appeal is dismissed confirming the judgment, dated 14.11.2014, rendered in CrI.A.No.358 of 2014 on the file of the I Additional Metropolitan Sessions Judge, Hyderabad.

9. Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

Dr. SHAMEEM AKTHER, J

29th January, 2019.
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