THE HON'BLE Dr.JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.1470 OF 2011

JUDGMENT:

This Criminal Appeal is filed by the appellant-complainant aggrieved by the acquittal recorded on 23.07.2010 in Crl.A.No.189 of 2008, on the file of V Additional Sessions Judge, Mahabubnagar. By the said Judgment, the Sessions Judge, set aside the conviction and sentence recorded by the Judicial Magistrate of First Class at Kodangal in STC.No.5 of 2006, dated 11.02.2008 against the respondent No.1-accused for the offence under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act').

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

3. Inspite of service of notice, there is no representation on behalf of respondent No.1/accused.

4. Learned counsel for the appellant-complainant submits that the accused borrowed an amount of Rs.95,000/- on 13.09.2005 to meet his business needs and promised to repay the same within short time, but he did not pay. After repeated demands, the respondent No.1-accused issued a cheque bearing No.0304639, dated 12.11.2005 for Rs.95,000/- drawn on State Bank of Hyderabad, Kosgi Branch, in favour of the appellant-complainant. The said cheque when presented returned with an endorsement "exceeds arrangement". Thereafter, the appellant-complainant got issued legal notice dated 18.01.2006 to respondent No.1-accused. The respondent No.1-accused gave reply on 15.02.2006, but did

not pay the amount covered under the dishonored cheque. Therefore, the appellant-complainant filed a complaint for the offence punishable under Section 138 of the Act, 1881.

5. During trial, the prosecution examined PW.1-complainant apart from PWs.2 to 5 and got marked Exs.P.1 to P.7 on its behalf. In defence, respondent No.1-accused was examined as DW.1 and got marked Exs.D.1 and D.2.

6. After the trial, the trial Court convicted the accused for the offence punishable under Section 138 of the N.I.Act and sentenced him to undergo Rigorous Imprisonment for a period of six months and to pay a fine of Rs.5,000/-, in default to suffer Simple Imprisonment for a period of six months. However, the appellate Court held that appellant-complainant failed to establish the existence of legally enforceable debt and that Ex.P.1-cheque was issued in discharge of legally enforceable debt, and allowed the appeal setting aside the judgment of the trial Court.

7. As per the entire evidence on record, it is seen that except Ex.P.1-cheque and oral testimony of PWs.1 to 3 with regard to lending of money, there is no other document to establish that respondent No.1-accused borrowed Rs.95,000/- on 13.09.2005. There are many inconsistencies in the evidence of PW.1-appellant-complainant with regard to the manner of lending of money to the respondent No.1-accused. Further, there is also inconsistency in the evidence of PWs.2 and 3 to establish the lending of money in between the complainant and respondent No.1-accused. There is no document to establish that the respondent No.1-accused owes Rs.95,000/- to the complainant. The respondent No.1-accused

also denied the contents of the Ex.P.1-cheque. There is also no satisfactory explanation forthcoming from the complaint, `why he did not obtain any document to lend money to the respondent No.1-accused.

8. In the circumstances, the appellant-complainant failed to establish that there was a legally enforceable debt in between him and the respondent No.1-accused and that the subject cheque was given towards discharge of legally enforceable debt. The appellate Court rightly set aside the judgment of the trial Court in STC.No.5 of 2006, dated 11.02.2008.

9. With the observations as above, the appeal is dismissed, as devoid of merit, confirming the judgment dated 23.07.2010, in Crl.A.No.189 of 2008, on the file of the Family Court Judge-cum-Addl. Sessions Judge, Mahabubnagar.

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

Dr.SHAMEEM AKTHER,J

Date :23.01.2019
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