

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

**CRIMINAL APPEAL No.1223 OF 2011**

**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 05.07.2011, rendered in CrI.A.No.321 of 2010 on the file of Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge at Hyderabad, whereby and whereunder, the appeal was allowed and conviction and sentence rendered in C.C.No.256/2009 on 30.08.2010 by the XVI Additional Judge-cum-XX Additional Chief Metropolitan Magistrate, Hyderabad, against the respondent No.2/accused for the offence under Section 138 of Negotiable Instruments Act, 1881 (for short 'N.I.Act') was set aside.

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

**3.** Learned counsel for the appellant/complainant would submit that there is Ex.A.9-Compromise Petition to substantiate that though an amount of Rs.14,00,000/- was agreed to be paid by respondent No.2-accused, only an amount of Rs.10,68,000/- was paid and for remaining amount of Rs.3,32,000/- three cheques were issued. Those cheques were dishonoured. After issuing a statutory notice and within a period of thirty days, complaint against the accused was filed for the offence punishable under Section 138 of N.I. Act. The Trial Court rightly appreciated the facts and circumstances of the case and convicted the accused.

However, the first Appellate Court held that there was no legally enforceable debt and erroneously dismissed the complaint and ultimately he prayed to set aside the impugned judgment.

**4.** In spite of service of notice on respondent No.2/accused, there is no representation on his behalf.

**5.** Now the point that falls for consideration is ‘whether there is any legally enforceable debt in between the parties?’

**6.** The counsel for the appellant has relied on Ex.P.9-Compromise Petition filed before the Special Court under A.P. Land Grabbing (Prohibition) Act (for short ‘Special Court’) to demonstrate that there was legally enforceable debt covering the amounts under Exs.P.1 to P.3-cheques. He further relied on Ex.P.10 copy of the docket order of the Special Court dated 19.01.2009 and Ex.P.13 another docket order dated 24.07.2009 of the Special Court. These are the basic documents on which the appellant had relied to substantiate that the amount covered under Exs.P.1 to P.3-cheques were given towards the legally enforceable debt. So, under these circumstances it is appropriate to examine Ex.P.9-Compromise Petition dated 19.01.2009.

**7.** In paragraph 4 of the said Compromise Petition, it is mentioned as follows:

“The respondent No.2 already paid the some amount of Rs.10,68,000/- out of Rs.14,00,000/- and remaining amount of Rs.3,32,000/- will be paid by way of post dated cheques given in favour of applicant Smt.V.Sunitha Rani, ICICI Bank, Habsiguda Branch, Habsiguda, Nacharam, Hyderabad, as follows:

- 1) Cheque No.547642 for Rs.1,32,000/- dated 15.06.2009
- 2) Cheque No.547643 for Rs.1,00,000/- dated 15.06.2009
- 3) Cheque No.547644 for Rs.1,00,000/- dated 15.06.2009”

**8.** As seen from this paragraph, it is simply stated that an amount of Rs.10,68,000/- was already paid. For remaining amount of Rs.3,32,000/- subject cheques Exs.P.1 to P.3 were issued. There was no mention anywhere in the Compromise Petition that an amount of Rs.14,00,000/- was agreed to be paid to the complainant by respondent No.2/accused towards relinquishment or conferring of any right, title or interest in respect of disputed land. Further, it is pertinent to refer to paragraph 5 of the Compromise Petition, which reads as under:

“5. It is submitted that the above compromise subject to the realization of the cheques amount given by the 2<sup>nd</sup> respondent then only binding on the applicant herein.”

**9.** In paragraph 5 it is specifically mentioned that the compromise entered in between two parties is subject to realization of Exs.P.1 to P.3. There is no mention that the cheque amounts were given as part of sale consideration or any other consideration. So when the terms of the compromise are not clear with regard to the legally enforceable debt as contended by the appellant's counsel, it is difficult to sustain the said contention. The other documents under Exs.P.10 and P.13 are the docket orders of the Special Court wherein the subject compromise was recorded and the Land Grabbing Case was disposed of and there is also no finding that an amount of Rs.3,32,000/- was due to the complainant herein. So under these circumstances, it is difficult to hold that there was any legally enforceable debt in between the parties to the litigation.

**10.** Therefore, the allegations made against the accused do not constitute an offence under Section 138 of N.I. Act though there is

issuance of cheques and notice within the time stipulated, etc. The first Appellate Court had rightly appreciated all the facts and circumstances of the case and acquitted the accused for the offence under Section 138 of N.I. Act. There is no infirmity in the impugned judgment and the same is liable to be confirmed. The complainant is entitled to work out his remedies available under law, if he is aggrieved by the terms and conditions mentioned in Ex.P.9-Compromise Petition.

**11.** With the above observations, the appeal is dismissed confirming the judgment, dated 05.07.2011, rendered in CrI.A.No.321 of 2010 on the file of the Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge at Hyderabad.

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

28<sup>th</sup> January, 2019.  
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**Dr. SHAMEEM AKTHER, J**