

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.1320 of 2009

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 11.05.2009, passed in C.C.No.587 of 2008 by the learned XVI Additional Judge-cum-XX Additional Chief Metropolitan Magistrate, Hyderabad, whereby, the accused was found not guilty for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') and acquitted him under Section 255(1) of Cr.P.C.

2. Heard the learned counsel for the appellant/complainant, the learned Additional Public Prosecutor for the 2nd respondent/State and perused the record.

3. No representation for the 1st respondent/accused.

4. Learned counsel for the appellant/complainant would contend that though the cheque return memo establishing the return of cheques on 17.09.2003 was filed before the trial Court, the trial Court did not take the same into consideration and erroneously dismissed the complaint stating that statutory notice was not issued within 30 days as contemplated under Section 138(b) of the Act.

5. As seen from the entire evidence on record, the cheque return memo dated 17.09.2003 had not been marked, which is an important piece of evidence. In the absence of marking the cheque return memo, dated 17.09.2003, it cannot be held that the cheque was returned dishonoured to the appellant/complainant on 17.09.2003.

Further, the subject complaint was filed on 14.10.2003, which is beyond 30 days from the date of Ex.P3, dated 03.09.2003. Therefore, requisite condition to issue notice under Section 138(b) of the Act within 30 days from the date of return of cheque had not been proved by the appellant-complainant. The Court below has elaborately discussed about Ex.P3-cheque return memo and Ex.P4-statutory notice. Exs.P1 and P2 were not issued as contemplated under Section 138 of the Act. There is no infirmity in the impugned order. There are no merits to consider the request of the appellant/complainant.

6. In the result, the Criminal Appeal is dismissed.

Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date : 28.01.2019
ssp