

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.1546 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 01.09.2009, rendered in Calendar Case No.300 of 2008 on the file of Judicial Magistrate of First Class, Manuguru, whereby and whereunder, 1st respondent/accused was found not guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act'), and accordingly, he was acquitted.

2. Heard the learned counsel for the appellant/complainant. There is no representation for 1st respondent/accused. Perused the record.

3. Learned counsel for the appellant/complainant would contend that the appellant gave an amount of Rs.2,50,000/- to the 1st respondent/accused on 06.06.2008 at Paloncha, Khammam District, as hand loan promising to repay the same within couple of days; that on repeated demands made by the appellant, and 1st respondent/accused has given Ex.P.1-cheque, dated 20.06.2008, for Rs.2,50,000/- towards discharge of legally enforceable debt; that when the said cheque was presented in Andhra Bank, Manuguru Branch for collection, the same was returned with a Memo, dated 01.07.2008, wherein it was stated that the cheque was dishonoured due to "INSUFFICIENT FUNDS"; that thereafter, a notice, dated 02.08.2008, as required under Section 138 of the NI Act was given to the 1st respondent/accused

informing about dishonouring of the subject cheque and demanded to pay the cheque amount within 15 days from the date of receipt of notice; that even after receipt of notice, the cheque amount was not paid and therefore, within the stipulated time, the appellant/complainant filed the complaint against the 1st respondent/ accused for the offence under Section 138 of the NI Act; that though all the requirements under Section 138 of the NI Act were complied with by the complainant, the learned Magistrate did not believe the transaction as well as cheque in question given towards discharge of legally enforceable debt and erroneously dismissed the complaint and ultimately, prayed to set aside the impugned judgment and convict the accused for the offence under Section 138 of the NI Act.

4. Under these circumstances, the point for determination in this appeal is:

“Whether the appellant/complainant proved the guilt of the 1st respondent/accused for the offence under Section 138 of the Act?”

5. **POINT:** Admittedly, there is no promissory note executed in between the parties to the litigation, except Ex.P.1-cheque, dated 20.06.2008. Except the self-serving statement of P.W.1 to substantiate payment of Rs.2,50,000/- as hand loan to the 1st respondent/accused on 06.06.2008 at Paloncha, Khammam District, there is no other evidence on record. Furthermore, there is nothing to establish that there were any business transactions or relations in between the 1st respondent/accused and the appellant. The appellant did not know the designation of the

1st respondent/accused, though he contends that the accused is a salaried employee drawing salary of Rs.30,000/- per month. The learned Magistrate recorded a finding with regard to Ex.P.1-cheque that there were two handwritings on it, one is in black ink and the other is in blue ink. There is no explanation as to why two different handwritings were found in Ex.P.1. Furthermore, if Ex.P.1-cheque was given towards discharge of debt, as contended by the appellant/complainant, it would have been in favour of the appellant/complainant and in the handwriting of the accused. In the circumstances of the case, it establishes that a blank cheque was pressed into service to file the subject complaint. Therefore, the essential requirements of legally enforceable debt as well as issuance of the cheque towards discharge of the legally enforceable debt have not been established by the appellant/complainant. The trial Court is justified in dismissing the Calendar Case. There is no infirmity in the impugned Judgment. There is nothing to take a different view. Therefore, the appeal is devoid of merit and is liable to be dismissed.

6. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 01.09.2009, rendered in Calendar Case No.300 of 2008 on the file of Judicial Magistrate of First Class, Manuguru.

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

Dr. SHAMEEM AKTHER, J

JANUARY 23, 2019
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