

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.602 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 18.04.2015, rendered in CrI.A.No.27 of 2013 on the file of XI Additional District and Sessions Judge (Fast Track Court), Ranga Reddy District at L.B. Nagar, whereby and whereunder, respondent No.2/accused was found not guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'), and accordingly, he was acquitted.

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

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

4. Learned counsel for the appellant/complainant would contend that though there exists Ex.P6 – Promissory Note, dated 05.02.2010, and the same was marked before the trial Court, the appellate Court did not consider the same and erroneously held that there was no legally enforceable debt between the parties to the litigation. There was specific mention about the existence of Ex.P6 – Promissory Note in the legal notice, dated 24.11.2010, issued to respondent No.2/accused. This aspect was also not considered by the appellate Court and it had erroneously set aside the conviction and sentence recorded against respondent No.2/accused for the offence under Section 138 of the N.I. Act and

ultimately, prayed to set aside the impugned judgment of the appellate Court and restore the judgment rendered by the trial Court.

5. As seen from the entire material placed on record, there is no mention about the Promissory Note (Ex.P6) in the complaint, in the sworn affidavit filed in support of the complaint and in the chief affidavit filed before the trial Court. Further, in the list of documents also, only five documents were mentioned initially and they were marked as Exs.P1 to P5. Thereafter, at a belated stage, Ex.P6, the disputed Promissory Note, dated 05.02.2010, was marked. The appellant/complainant, relying on the said Promissory Note, contended that respondent No.2/accused had borrowed money under Ex.P6 – Promissory Note and did not repay the same, and when demanded, he issued a cheque, but the same was dishonoured.

6. The non-marking of Ex.P6 – Promissory Note at first instance and non-mentioning of its existence in the complaint and in the sworn statement filed in support of the complaint are fatal to the case of appellant/complainant. Mere mentioning about the existence of Ex.P6 – Promissory Note in the legal notice, dated 24.11.2010, is of no consequence and no presumption can be drawn under Section 139 of the N.I. Act. The appellate Court had rightly determined that there was no legally enforceable debt between the parties to the litigation and set aside the conviction and sentence recorded against respondent No.2/accused by the trial Court. There is no infirmity in the impugned judgment.

There are no circumstances to take a different view. The appeal is devoid of merit and is liable to be dismissed.

7. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 18.04.2015, rendered in Crl.A.No.27 of 2013 on the file of XI Additional District and Sessions Judge (Fast Track Court), Ranga Reddy District at L.B. Nagar.

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

January 21, 2019.
MD

Dr. SHAMEEM AKTHER, J