THE HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL APPEAL No.2852 of 2018

JUDGMENT:

The complainant preferred the present Criminal appeal under Section 378 (4) Cr.P.C. questioning the judgment, dated 12.09.2018, passed in C.C.No.87 of 2017 on the file of the Special Magistrate, Cyberabad at Hayathnagar, wherein the 1st respondent/accused was acquitted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short "the Act").

For the sake of convenience, the parties will hereinafter be referred to as arrayed in the C.C.

The facts, in brief, are as under:

The appellant/complainant filed a private complaint against the accused for an offence punishable under Section 138 of the Act. The allegations in the complaint would disclose that in pursuance of the compromise and settlement, both the complainant and the accused entered into a settlement agreement, dated 15.10.2016, wherein the accused had agreed to pay an amount of Rs.70.00 lakhs to the complainant towards full and final settlement and out of which the accused has paid an amount of Rs.50,000/- to the complainant towards advance and further agreed to pay the remaining amount of Rs.69,50,000/- to the complainant on or before 1st November, 2016 and that the accused had issued two cheques, both dated 01.11.2016, bearing Nos.627842 for Rs.34,50,000/- and

627844 for Rs.35,00,000/- drawn on State Bank of Hyderabad, Collectorate Complex, Nalgonda Town and District, for discharge of her legal liability to the complainant and a document was executed on 31.10.2016 in favour of the complainant requesting the complainant to present the said two cheques in the first week of November, 2016 for encashment. When the said cheques were presented by the complainant in his banker i.e., Andhra Bank, Thurkayamjal Branch, the same were dishonoured for the reason that "Payment stopped by the drawer", vide cheque return memo dated 05.11.2016. A notice, dated 15.11.2016 came to be issued to the accused which was served on the accused on 18.11.2016. Though the accused received notice, she has not paid the cheque amount nor given any reply. Hence, the complainant filed the present complaint.

After recording the sworn statement of the complainant, the case was taken on file, and the summons were issued to the accused. Pursuant there to the accused appeared before the Court and was examined under Section 251 Cr.P.C., for which she denied the offence and claimed to be tried.

In support of his case, the complainant examined P.Ws.1 to 3 and got marked Exs.P1 to P11.

After closure of the complainant's evidence, the accused was examined under Section 313 Cr.P.C. explaining the incriminating material available on record, but the same was denied by the

accused. In order to prove her defence, the accused herself was examined as D.W.1 and got marked Exs.D1 to D15.

After analyzing the evidence available on record, the trial Court acquitted the accused. Challenging the same, the present Criminal Appeal is filed by the complainant.

Heard and perused the record.

Learned Counsel for the appellant would submit that as per the evidence of P.W.1 coupled with Exs.P1 to P6, it is evident that the cheques have been issued by the accused for an amount of Rs.69,50,000/- towards discharge of legally enforceable debt. He further submits that it is also established that the said cheques were returned, unpaid. Subsequently, the accused failed to repay the cheque amount through the demand made by the complainant. He also submits that since it is proved that Exs.P1 and P2 cheques have been signed and issued by the accused to the complainant, the trial Court shall raise a presumption to the effect that the said cheques have been issued towards discharge of legally enforceable debt. He further submits that in ***Rangappa v. Sri Mohan***[1] the Apex Court held that presumption under Section 139 of the Negotiable Instruments Act, extends towards the existence of legally enforceable debt, which means (1) the cheques are issued towards the discharge of debts owed by the accused to the complainant and the said debt is also a legally enforceable one. In ***Anil Sachar and***

[1] (2010) 11 SCC 441

another v. Shree Nath Spinners Private Limited and others[2] the Apex Court mentioned certain circumstances, wherein the accused could not be able to rebut the presumption under Section 139 of the N.I. Act. He also submits that the above two decisions are squarely applicable to the facts of the present case. Therefore, the presumption under Section 139 of the N.I. Act is attached to Ex.P1. He further submits that it is for the accused to rebut the said presumption and it is to be seen whether the accused could be successful in discharging the said burden. He further submits that Exs.P1 and P2 were issued to discharge the liability of the accused under Ex.P6. As the accused also admitted her signature on Ex.P6 and she is working as a Government Doctor, she cannot plead ignorance of the contents of Ex.P6. Strangely, the accused as D.W.1 said that she signed on Ex.P6 without reading the contents. Therefore, the version of P.W.1 is highly believable. He also submits that the finding of the trial Court is that the accused has issued stop payment instructions to her banker. But as per the principles of law laid down in ***M/s. Laxmi Dyechem v. State of Gujarat***[3]**,** the Apex Court held that "the prosecution for the offence under Section 138 of the N.I. Act is permissible even if the cheque is returned for any reason like – Refer to drawer, Account closed, Signature differs, Stop payment instructions", as such the said finding is not correct. He also submits that the finding of the trial Court that the cheques were

[2] AIR 2011 SC 2751
[3] (2012) 13 SCC 375

invalid on the ground that they were issued for a sum more than what is specified on them is not tenable since the said cheques were not returned by the banker on the said ground and they were returned on the ground that payment has been stopped by the drawer. He further submits that the finding of the trial Court that there is no mention about the cheque numbers in Ex.P6 is incorrect as in Ex.P6 there is a mention about handing over of two cheques by the accused to the complainant and also the amount for which the cheques were given. There is no plausible explanation from the accused why the cheques were signed and given by her to the complainant and therefore the accused failed to rebut the presumption without any iota of evidence much less preponderance of probabilities. Moreover, the offence under Section 138 of the N.I. Act being a technical one, the complainant established his case with cogent oral and documentary evidence and the accused failed to discharge her burden why the cheques were in the hands of the complainant. In support of his contentions, he relied on the judgments of the Apex Court in ***Kishan Rao v. Shankar Gouda***[4]***; T.P.Murugan (dead) through L.Rs. v. Bojan***[5] and ***Rohitbhai Jivanlal Patel v. State of Gujrat***[6]***.***

Learned Counsel for the 1st respondent/accused would submit that the learned trial Court has rightly acquitted the accused on the ground that she had creditably rebutted the presumption and

[4] (2018) 3 SCC (Cri) 455
[5] (2018) 3 SCc (Cri) 585
[6] (2019) Online SCC 389

established her defense that the impugned cheques were issued for the purpose of security only, which can be evident from the terms and conditions stipulated in Ex.P6. He further submits that the trial Court has rightly observed that no document has been filed to show that the appellant had incurred an expenditure of Rs.3,00,00,000/- towards identifying and procuring the site for the Petrol Pump and despite being an income tax payee, the appellant had failed to file any income tax returns to show that he had incurred the said expenditure. He also submits that the trial Court rightly observed that there is no mention with regard to the cheque numbers and dates in Ex.P6 and that the appellant had filled up the same and deliberately presented the cheques despite knowing very well that the cheques contained the caption of "Not over Rs.10,00,000/-". He further submits that the accused had aptly rebutted the presumption through her reply notice dated 01.02.2016, wherein it is clearly substantiated factum that she had neither instructed nor assured the complainant to present the said cheques. The accused had discharged the burden cast on her by leading cogent oral and documentary evidence. He also submits that the complainant could not prove either through documentary or oral evidence that the accused had committed the offence under Section 138 of the N.I. Act and on the other hand, she had adduced appropriate oral and documentary evidence to prove that she is innocent of the offence and prayed to dismiss the Criminal Appeal. In support of his

contentions, learned Counsel for the 1st respondent relied upon the following judgments:

1. ***K.Subramani v. K.Damodara Naidu***[7]
2. ***Indus Airways Private Ltd. And others v. Magnum Aviation Private Limited and another***[8]
3. ***G.Ashok Kumar Goud v. P.Anjili Bai and another***[9]

Considering rival contentions and perusing the material available on record, the point that arises for determination is "Whether the cheques under Exs.P1 and P2 were issued towards discharge of legally enforceable debt or not?

The case of the appellant/complainant is that the 1st respondent/accused sought the assistance of the complainant for establishing a petrol bunk of Bharath Petroleum Corporation Limited promising to hand over the same for the management by the complainant. Believing the words of the accused, the complainant identified a suitable land in Ibrahimpatnam and invested huge amount of Rs.3.00 Crores for necessary works for opening of the retail outlets. The accused also executed a notarized declaration-cum-undertaking stating that she handed over the entire business to the complainant and she would relinquish her entire rights over the retail outlets and that she has received an amount of Rs.20.00 lakhs as full and final settlement dated 15.04.2013. Believing the words of the accused, the complainant paid an amount

[7] (2015) 1 SCC 99
[8] (2014) Law Suit (SC) 252
[9] (2012) 2 ALD (Crl.) 126 (AP)

of Rs.20.00 lakhs as per terms and conditions mentioned in the said document. Due to non issue of cheques (RTGS) by the accused, the complainant is not in a position to operate the said petroleum bunk and issued a legal notice to the accused on 27.09.2016 asking her to come forward by issuing necessary cheques for petroleum loads. Thereafter, on the intervention of elders, the matter was compromised.

Pursuant to the compromise and as per the terms and conditions of Ex.P6, the accused had issued the cheques towards discharge of legally enforceable debt. In the cross-examination, P.W.1 had admitted that he has not filed any document to show that he has incurred Rs.3.00 Crores for identifying the land for petroleum bunk and also admitted that he has not filed any bank statement to show that he has such huge amount in his bank account. Since P.W.1 failed to file any document, the learned trial Court has rightly observed that the appellant has failed to establish that he is sound in finance and he has bank deposit of Rs.3.00 Crores and spent it for the purpose of installation of petrol bunk by identifying the land.

Further, though PW.1 admits that he was an income tax assessee, but he has not shown the amount spent for installation of Petroleum bunk Rs.3.00 Crores in his tax returns during that period. Therefore, a doubt arises whether the complainant was financially capable of spending such huge amount. In the absence of any corroborative evidence, the version of the complainant cannot be

accepted at its face value. Further in view of the admission made by PW1 that he is an income tax assessee, the question would be whether non-showing of the amount in his income tax return is sufficient to rebut a presumption that the cheque was not issued in discharge of a debt or liability.

Identical issue came up for consideration before the Bombay High Court in ***Sanjay Mishra Vs. Ms. Kanishka Kappor @ Nikki and Another***[10] wherein the Court held as under:

> "7. It is true that merely because amount advanced is not shown in Income Tax Return, in every case, one cannot jump to the conclusion that the presumption under Section 139 of the Act stands rebutted. There may be cases where a small amount less than a sum of Rs.20,000/- is advanced in cash by way of loan which may be repayable within few days or within few months. A complainant may not show the said amount in the Income Tax Return as it is repayable within few days or few months in the same financial year. In such a case the failure to show the amount in the Income tax Return may not by itself amount to rebuttal of presumption under Section 139 of the said Act. If in a given case the amount advanced by the complainant to the accused is a large amount and is not repayable within few months, the failure to disclose the account in Income Tax return or Books of Accounts of the complainant may be sufficient to rebut the presumption under Section 139 of the Act."

Even in the instant case the amount spent by the complainant was not shown in his income tax returns. As such, the trial Court had rightly held that it creates a doubt regarding the financial

[10] 2009 Crl.L.J. 3777

position of the appellant and if he really spent that much amount, there must be record for him for withdrawal of amount from his bank account and spending the same.

Further, it would be appropriate to refer to the contents of Ex.P6-settlement agreement, which reads as under:

> "This settlement agreement is made and executed on this the 15th days of October, 2016 at Hyderabad by Smt. K.Yakamma @ Kalyani, W/o Balaji, R/o 8-1-750, R.T.C.Colony, Nalgonda District : First party.
>
> R.Narender S/o. R.Prasad Naik, R/o. Plot No.119, Narsimha Rao Nagar, Saradha Nagar, Vanasthalipuram, R.R.District: Second party.
>
> Whereas, the dispute were arisen between the first and second party in running petrol bunk by name M/s. Adidas Guru Petros at Sheriguda, Ibrahimpatnam, R.R.District and the same is settled before the elders of both the parties and as per settlement, the first party herein had agreed to pay an amount of Rs.70,00,000/- (Rupees Seventy Lakhs only) as total settlement amount for which the second party had agreed to receive the same. The second party had agreed to handover the said Petrol Bunk to the first party today itself and the second party had agreed he shall not interfere in the schedule premises of the said petrol bunk from today onwards and agreed not interfere in the affairs of the business and day to day affairs. The first party had paid an amount of Rs.50,000/- as advance out of total amount. The first party had agreed to pay the balance amount of Rs.69,50,000/- on or before 01.11.2016, for which the first party had handed over the cheques (No.2) drawn on S.B.H. to the second party for an amount of Rs.69,50,000/- as security for the amount. Both the parties here to put their hands on to this indenture with free

> will and consent without any coercion in the presence of following witnesses on this day, month and year as aforementioned."

The contents of Ex.P6-settlement deed referred to above would clearly show that two cheques mentioned in the agreement does not specifically disclose one for Rs.34,50,000/- and another for Rs.35,00,000/- and that there is no mention with regard to the cheque numbers, date and the amount in Ex.P6. Therefore, the trial Court has rightly held that it creates a doubt whether the said cheques, which were filed in the Court are the same cheques that were mentioned in Ex.P6 or otherwise. Further, the contents of Ex.P6 also disclosed that cheques were issued only for security purpose. After verifying Ex.P1 and P2 cheques, the trial Court found that they were valid each up to Rs.10.00 lakhs and the signatures of the accused on Exs.P1 and P2 are different from other writings in the cheques. It appears that blank cheques were given to the complainant for security purpose. Further, since the limit mentioned in Exs.P1 and P2 for Rs.10.00 lakhs only, the amount mentioned in Exs.P1 and P2 exceeding to Rs.10.00 lakhs, the trial Court has rightly held that the said cheques were invalid cheques.

Further the record also discloses that the accused had filed a private complaint against the father of the appellant/complainant by name R.Prasad Naik, alleging that he threatened the accused herein to execute an undertaking in favour of his son and while discussing with regard to the said issue he has also threatened her

with dire consequences. The said private complaint was referred to the police under Section 156 (3) of Cr.P.C. and basing on such reference, the Police, Ibrahimpatnam, registered a case in F.I.R. No.408 of 2016 dated 17.10.2016 and after completion investigation, police filed charge sheet. On 27.10.2016 itself, the accused herein issued a notice to the complainant stating that the complainant had violated the terms and conditions of the settlement agreement by removing all the important files pertaining to the petrol bunk and also raised an illegal demand of excess amount and hence the accused had no option except to stop the payment of the said two cheques bearing Nos. 627842 and 627844, which were issued only for security purpose. From the above, it is clear that after receiving the notice, dated 27.10.2016, the complainant had filled up the cheques and presented the same on 01.11.2016. Therefore, the trial Court has rightly held that the accused was successful to rebut the presumption available to her under Section 139 of Negotiable Instruments Act and concluded that the evidence placed on record by the complainant is not sufficient to prove the case against the accused beyond all reasonable doubt and accordingly acquitted her.

For the aforesaid reasons, I am of the opinion that the trial Court was perfectly justified in acquitting the 1st respondent/ accused and the citations relied upon by the learned Counsel for the complainant are not applicable to the facts of the present case.

Hence, I see no reason to interfere with the findings of the trial Court.

Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 12.09.2018 passed in C.C.No.87 of 2017 on the file of the Special Magistrate, Cyberabad at Hayathnagar.

As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

28.04.2021
gkv/Gsn