

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.753 of 2016

JUDGMENT:

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1. This appeal is filed by the complainant against the judgment dated 23.7.2015 passed by the I Additional Sessions Judge, Khammam in CrI.A.No.180 of 2014.

2. The case of the complainant is as follows:

The appellant-complainant and the 2nd respondent-accused are well acquainted with each other. Out of such acquaintance, the accused approached the appellant and borrowed an amount of Rs.70,000/- from the appellant on 6.8.2010 for the purpose of his family necessities and executed a promissory note in favour of the appellant agreeing to repay the same with interest at 24% per annum. Later, on demand made by the appellant, the accused issued a cheque dated 26.10.2011 for Rs.90,000/- drawn on Bhadradi Co-operative Urban Bank Limited, Gandhi Chowk Branch, Khammam towards discharge of the said debt. When the said cheque was presented, the same was dishonored for insufficient funds. Then, the appellant-complainant got issued a legal notice dated 28.1.2012 to the accused, but the accused failed to pay the amount. Hence, the appellant-complainant filed a private complaint against the accused. The learned Special Judicial Magistrate of First Class, Khammam took the case on file as C.C.No.756 of 2013.

3. The trial Court examined the accused for the accusation under Section 138 of the Negotiable Instruments Act, for which he pleaded not guilty and claimed to be tried.

4. During the course of trial, P.W.1 was examined and Exs.P1 to P6 were marked on behalf of the complainant. No oral or documentary evidence was adduced on behalf of the accused.

5. On appreciation of oral and documentary evidence, the trial Court having found the accused not guilty for the offence under Section 138 of the Negotiable Instruments Act, acquitted him. Aggrieved by the same, the appellant-complainant filed appeal viz., CrI.A.No.180 of 2014 before the I Additional Sessions Judge, Khammam. The learned Additional Sessions Judge found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to pay a fine of Rs.1,20,000/- in default to suffer simple imprisonment for a period of six months. It was directed that out of the said fine amount, Rs.1,00,000/- shall be given to the complainant as compensation. Being not satisfied with the said judgment, the complainant filed this appeal.

6. Learned Counsel for the appellant submitted that the lower appellate Court ought to have sentenced the accused for a period of two years imprisonment and to pay twice the amount of cheque as compensation to the complainant and that in all cases where there is a conviction under Section 138 of the negotiable Instruments Act, there should be a consequential levy of fine amount sufficient to cover the cheque amount and interest thereon.

7. Heard and perused the material available on record.

8. The material on record goes to show that the 2nd respondent was charged for the offence under Section 138 of the Negotiable Instruments Act, and the trial Court acquitted him whereas the lower appellate Court convicted him to pay fine of Rs.1,20,000/-. It was directed that out of the said fine amount, Rs.1,00,000/- shall be given to the complainant as compensation. The complainant filed this appeal on the ground that the lower appellate Court imposed inadequate sentence on the accused.

9. At this juncture, it is relevant to note Section 138 of the Negotiable Instruments Act, which reads as follows:

“Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque or with both.”

10. From the above provision, it is clear that the accused, who was found guilty for the offence under Section 138 of the Negotiable Instruments Act, be punished with imprisonment for a term which may be extended to two years **OR** with fine, which may extend to twice the amount of the cheque **OR** with both. There is no mandatory provision that the accused under Section 138 of the Negotiable Instruments Act shall be punished with two years imprisonment and to pay twice the amount of the cheque. Therefore, this Court cannot accept the contention of the learned Counsel for the appellant.

11. Considering the facts and circumstances of the case and the findings of the lower appellate Court, this Court is not inclined to interfere with the judgment under appeal.

12. Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE RAJA ELANGO

Dated:12th August, 2016
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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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