

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.808 of 2016

JUDGMENT:

This Criminal Appeal is preferred by the complainant challenging the Judgment dated 11.09.2013 passed in Criminal Appeal No.251 of 2011 by the Court of the II Additional Metropolitan Sessions Judge, at Hyderabad, whereby the learned Judge allowed the appeal and set aside the Judgment, dated 03.05.2011 passed in C.C.No.100 of 2010 by the learned XIX Additional Chief Metropolitan Magistrate, Hyderabad, in convicting the accused for the offence under Section 138 of the Negotiable Instruments Act and sentencing him to suffer simple imprisonment for a period of one year and to pay a fine of Rs.10,000/- (Rupees ten thousand only), in default, to suffer simple imprisonment for a period of three months.

The case of the complainant in brief is as follows.

That the husband of the complainant and the accused are friends, due to such acquaintance, the accused asked some amount for the purpose of investing in his saree business agreeing to repay the same with three months and having considered the request of the accused, the complainant believed the accused and gave a handloan of Rs.1,50,000/- on 20.03.2007. Subsequently, the accused failed to repay the same and after repeated demands, he gave a cheque bearing No.702489, dated 23.02.2008 drawn on Syndicate Bank, Malakpet Branch, Hyderabad, towards discharge of the handloan amount. On presentation, the said cheque is dishonoured for the reason 'funds insufficiency'. Hence, the complaint. After completion of the investigation, charge sheet was filed by the police against the accused for the offence under Section 138 of the Negotiable Instruments Act.

To prove the guilt of the accused, P.Ws.1 to 3 were examined and Exs.P.1 to P.5 were marked. On behalf of defence, D.Ws.1 to 3 were examined and Exs.D.1 and D.2 and Exs.X.1 to X.4 were marked.

On appreciation of oral and documentary evidence, the trial Court convicted the accused for the offence under Section 138 of the Negotiable Instruments Act and sentenced him as stated above. Aggrieved over the same, the accused preferred criminal appeal and the said appeal is allowed by the lower appellate Court. Aggrieved over the same, the present criminal appeal is filed by the complainant.

Heard and perused the material available on record.

The lower appellate Court, while reversing the Judgment of the trial Court and acquitting the accused, observed that Ex.P.1, cheque, is dated 23.02.2008 and that P.W.1 presented the said cheque on 23.08.2008, i.e., after lapse of statutory period of six months. So, when the cheque is dated 23.02.2008, it must reach the drawer's bank on 22.08.2008 for collection, then only it can be said that the cheque was presented for collection with the drawer's bank within the period of six months. Hence, the complainant failed to present the cheque within the statutory period of six months and as such, the criminal court has no jurisdiction to issue process against the accused. Hence, the conviction and sentence imposed on the accused by the trial Court is set aside by the lower appellate Court.

In view of the above discussion and on perusing the Judgment of the lower appellate Court, this Court is of the view that the lower appellate Court has appreciated the evidence in proper perspective and the reasoning given while acquitting the accused is in accordance with law. The Judgment of the lower appellate Court does not suffer from any perverse findings and the acquittal recorded by the lower appellate Court needs no interference by this Court. Hence, the Criminal Appeal is liable to be dismissed.

The Criminal Appeal is accordingly dismissed. Miscellaneous applications, if any pending in this appeal, shall stand dismissed.

26.08.2016
pln

JUSTICE RAJA ELANGO

