

H. Rajagopal Vs. D.C. Mehta

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Court : Andhra Pradesh

Decided On : Feb-18-2003

Reported in : 2003(1)ALD(Cri)993; 2003(1)ALT(Cri)547; III(2003)BC329; [2003]44SCL187(AP)

Judge : Gopal Krishna Tamada, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138

Appeal No. : Criminal Appeal No. 920 of 1998

Appellant : H. Rajagopal

Respondent : D.C. Mehta

Advocate for Def. : G. Krishnamurthy, Adv.

Advocate for Pet/Ap. : H.S. Dora, Adv.

Disposition : Appeal dismissed

Judgement :

Gopal Krishna Tamada, J.

1. Aggrieved by the judgment dated 13-4-1998 passed in C.C. No. 205 of 1997 on the file of the VI Metropolitan Magistrate for Railways, Visakhapatnam acquitting the sole accused respondent for the offence punishable under Section 138 of the

Negotiable Instruments Act (for short 'the Act'), the unsuccessful complainant filed the present appeal.

2. The brief facts of the case are that the appellant was doing transport business and also a social worker and he knows the accused in connection with his business. The appellant has lent a sum of Rs. 5,17,700 to the accused and in discharge of the said loan; the respondent issued a cheque for Rs. 5,16,700 dated 25-8-1992 drawn on Andhra Bank, Pittapuram Colony branch. The appellant presented the said cheque for encashment in the Bank of India on 7-9-1992 in which he was having an account and his banker sent the cheque to the Andhra Bank, but the same was returned with an endorsement 'funds insufficient' and thereupon the appellant got issued a legal notice dated 11-9-1992 demanding the respondent to pay the cheque amount within 15 days from the date of receipt of the notice and after receiving the notice, the accused sent a reply dated 16-9-1992 stating that he did not issue the cheque for the said amount of Rs. 5,16,700. Hence, the accused is liable for the offence punishable under Section 138 of the Negotiable Instruments Act.

To prove the guilt of the respondent, the appellant himself was examined as PW. 1 and examined PWs. 2 and 3 and got marked Exs: P. 1 to P. 23. Exs: D. 1 to D. 15 were marked on behalf of the respondent.

3. On a consideration of the entire oral and documentary evidence, the court below refused to accept the evidence of the appellant and accordingly; while dismissing the complaint, acquitted the respondent of the offence punishable under Section 138 of the Act.

4. The learned senior counsel Sri. C. Padmanabha Reddy strenuously contended before this Court that though a petition was filed by the appellant for sending the cheque in issue to an expert to ascertain as to whether the cheque was forged or not, the court below dismissed the said petition holding that there was no necessity to send the same to an expert. According to him, the opinion of the expert would clinch the issue as to whether the cheque was issued for an amount of Rs. 516 or for Rs. 5,16,700. It is further contended by the learned senior counsel that Ex: P. 2 is the Xerox copy of the cheque dated 25-8-1992 and it does

not contain any stroke 'after 516 whereas Ex: P. 1. the original cheque in issue contains the stroke' 'after 516 and therefore it shows that the stroke' after 516 was added subsequent to the filing of the complaint. It is further brought to the notice of this Court by the learned senior counsel that originally the cheque was returned only on the ground of insufficiency of funds and this was spoken to by the Bank Manager after verifying the records, whereas in the cheque return memo, which was marked as Ex: P. 22. It is mentioned that the cheque was returned on two grounds i.e. insufficiency of funds and also material alteration. According to him, all this is done only to create an impression in the mind of the court that there was material alteration in the cheque dated 25-8-1992. Summing up the matter, the learned senior counsel requested this Court to remand the matter to the court below with a direction to send the cheque to an expert to ascertain whether the cheque was forged or not.

5. On the other hand, the learned counsel for the respondent Mr. Krishna Murthy contended that the petition to send the cheque in issue to an expert was filed in the year 1993 and the same was dismissed in 1993 itself and now the same cannot be agitated since the order rejecting the request of the appellant has become final. It is further contended by the learned counsel for the respondent that even for a naked eye, it is clear that there are material alterations in the cheque dated 25-8-1992 and it was issued only for an amount of Rs. 516 but by any stretch of imagination, it cannot be said that it was issued for an amount of Rs. 5,16,700. It is further submitted by the learned Counsel for the respondent that it is not open for the appellant to request this Court to send the document in question to an expert when once the same was negated and the order has become final.

6. The cheque in question is marked as Ex: P.1 and it is dated 25-8-1992. A look at the cheque in question, it is clear that the figure Rs. 5,16,700 is mentioned in the cheque and the same was written in words also. In between '516' and 700' there is a stroke 'in Ex: P.1. If really the cheque was issued for an amount of Rs. 5,16,700' normally there would be 'commas' immediately after '5' and '16' to show that the cheque is for an amount of Rs. 5,16,700. In the instant case, Ex: P.1 does not contain any 'commas' anywhere in the figure. Further, from a perusal of the cheque in question, it is clear that the writing of '516' is entirely different from the

writing of '700'. If the entire amount is written at a stretch, it would not have been written as shown in the cheque dated 25-8-1992. Though the amount is written as five lakhs sixteen thousand seven hundred only in words, in view of the explanation offered by the respondent that he gave the cheque for an amount of Rs. 516 only without filling up the other particulars and taking advantage of the blanks in the cheque and also rivalry between the appellant and the respondent, he filled the cheque in issue as if the cheque was issued for an amount of Rs. 5,16,700 appears to be plausible and acceptable. Apart from the said discrepancy in the cheque in issue, there are other circumstances, which go to prove that the cheque was not issued in discharge of a legally enforceable debt. In the statutory notice issued by the appellant, he has stated that the respondent herein borrowed an amount of Rs. 5,16,700 by way of hand loan, but however in the complaint and during the course of his examination, the appellant has come forward with a different theory stating that there are business transactions between them and there are arrears to a tune of Rs. 5,18,000 and odd to be paid to him by the respondent and in discharge of the said debt, the cheque in question was issued for an amount of Rs. 5,16,700. If really, the respondent was due to the appellant, the said fact would have found place in the statutory notice dated 11-9-1992 (Ex: P.5) issued under Section 138(b) of the Act. This also throws a doubt in the mind of the Court as to whether cheque was issued in discharge of a legally enforceable debt. Apart from the above, according to the appellant the respondent was due to the tune of Rs. 5,18,490.23 paisa and the cheque in issue was in discharge of part-payment of the said due amount. Again, this version of the appellant throws a doubt as to whether the cheque in question was really issued for the said amount when the total arrears are Rs. 5,18,429.23 paisa. The question of issuing a cheque for an amount of Rs. 5,16,700 as part-payment would not arise because the difference between the amount due and the amount paid by way of cheque is only about Rs. 2,000. If really the cheque was issued for an amount of Rs. 5,16,700, it should be towards full and final settlement or if it were to be treated towards part-payment, he would have issued the cheque for an amount of Rs. 2,00,000 or 3,00,000 but not for Rs. 5,16,700. Looking from any angle, the issuance of the cheque in question appears to be doubtful. Another important factor, which is also to be taken into consideration, is that the appellant herein

issued four cheques to the respondent and the same were not honoured and the respondent herein filed C.C. No. 394 of 1991 against the appellant wherein the appellant was convicted for the offence punishable under Section 138 of the Act and sentenced to pay a fine of Rs. 500. Therefore, the contention of the respondent that the present criminal case is nothing but a counter blast appears to be correct.

7. In the light of the discussion made above, this Court is also of the view that the appellant has failed to prove the guilt of the respondent beyond all reasonable doubt and as such this court also concurs with the findings of the court below. Accordingly, the appeal is dismissed.

8. Since, it is represented by both the counsel that cases are pending between the parties regarding material alterations made in the cheque issued, the court below is hereby directed not to be influenced by any of the observations or findings recorded by this court with regard to the issuance of the cheque or with regard to the material alterations and proceed with the trial in accordance with law.