

**HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

**CRIMINAL APPEAL No.853 OF 2007**

**JUDGMENT:**

The unsuccessful complainant in Calendar Case No.101 of 2002, on the file of the Court of III Additional Judicial Magistrate of First Class, Kakinada, East Godavari District (for short, 'the learned Magistrate'), filed the present Appeal impugning the judgment, dated 20.06.2007, wherein the learned Magistrate found the respondent/accused not guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') and accordingly acquitted him under Section 255(1) Cr.P.C.

2. The parties to this Criminal Appeal will hereinafter be referred to as described before the trial Court, for the sake of convenience.

3. The case of the complainant, in brief, according to the averments in the complaint is that accused joined as subscriber in one of the Chits conducted by complainant in Chit Group No.KCS-1C/11 on 11.10.1999 for the chit value of Rs.1,00,000/- payable in 25 monthly installments at the rate of Rs.4,000/- p.m.

commencing from 18.07.1999 and terminating by 18.07.2001. It is alleged that accused paid some installments, participated in auction held on 19.12.1999 and became highest bidder. He agreed to forego a sum of Rs.36,500/- and received prize money of Rs.63,500/- from the complainant but he did not pay the installments to the complainant in spite of repeated requests and demands except some installments up to 11.05.2000. It is further alleged that on the demand of complainant officials, accused issued a cheque on 31.08.2001 for Rs.70,000/- drawn on Andhra Bank, Main Branch, Kakinada towards part payment of chit due to the complainant. Complainant presented the said cheque in Andhra Bank, Main Branch, Kakinada on 24.09.2001 for encashment but it was dishonoured with an endorsement '*Exceeds Arrangement*'. Complainant got issued legal notice on 05.10.2001 calling upon the accused to make payment due under the cheque. On receipt of notice, the accused approached the complainant company and requested it not to file a case and took away the dishonoured cheque and issued another cheque dated 31.12.2001 for Rs.75,000/- drawn on Andhra Bank, Main Branch, Kakinada towards part payment and assured the complainant people that it will be honoured. Believing the words, complainant people presented the said cheque in Andhra Bank, Kakinada on

03.01.2002 for encashment but it was also dishonoured on 03.01.2002 with an endorsement of '*Exceeds Arrangement*'. Again, the complainant issued notice to the accused on 11.01.2002. It was received by the accused on 16.01.2002, but the accused never paid the amount nor sent any reply. Hence, the complaint to prosecute the accused for issuing a cheque without having sufficient funds in his account.

4. The learned Magistrate took the case on file under Section 138 of the NI Act.

5. After following the procedure under Section 207 Cr.P.C and on appearance of the accused, copies of case documents were furnished to him under Section 207 Cr.P.C. The accused was examined under Section 251 Cr.P.C. for which he denied the offence, pleaded not guilty and claimed to be tried.

6. The complainant, to bring home the guilt against the accused, examined the Manager of the complainant Company as PW.1 and got marked Exs.P-1 to P.10.

7. After closure of the evidence of prosecution, accused was examined under Section 313 Cr.P.C. for which he denied the

incriminating circumstances appearing against him. He examined himself as DW.1.

8. The learned Magistrate on hearing both sides and after considering the oral and documentary evidence on record, found the accused not guilty of the charge for the offence under Section 138 of the NI Act.

9. Felt aggrieved of the same, the unsuccessful complainant is before this Court as appellant.

10. Now, in deciding this Criminal Appeal, the points that arise for consideration are:

1. Whether the complainant before the learned III Additional Judicial Magistrate of First Class, Kakinada proved that the accused issued Ex.P-1 – cheque towards discharge of a legally enforceable debt?
2. Whether the complainant proved the offence under Section 138 of the NI Act against the accused beyond reasonable doubt?
3. Whether the impugned judgment, dated 20.06.2007, is sustainable under law and facts and

whether there are any grounds to interfere with the same?

**POINT Nos.1 & 2:**

11. Sri N. Siva Reddy, learned counsel appearing on behalf of the appellant-complainant, would contend that the judgment of the learned trial Judge is not sustainable under law and facts and the learned Magistrate erroneously held that there is no legally enforceable debt and that the evidence on record would prove the alleged offence as such Appeal against the accused may be allowed.

12. Sri K. Kanaka Raju, learned counsel, representing Sri K. Subrahmanyam, learned counsel for the 1<sup>st</sup> respondent/accused, would contend that the complainant did not file account copy before the trial Court to show the amount due by the accused as on the date of Ex.P-1 and, on the other hand, the suit filed by the complainant before the learned I Additional Senior Civil Judge, Kakinada was decided by holding that the amount due was only Rs.25,000/- and, if that be the case, issuance of Ex.P-1 in the manner as alleged is highly doubtful. Accused examined himself as DW.1 to contend that the complainant obtained Ex.P-1 in

accordance with some other transaction but not relating to the chit transaction alleged against him. The learned trial Judge with elaborate reasons found the respondent/accused not guilty as such Appeal is liable to be dismissed.

13. PW.1 before the trial Court was no other than the Manager of the Complainant Company and he adverted to the case in accordance with the averments in the complaint. Through him, Exs.P-1 to P-10 were marked. The accused examined himself as DW.1 to explain the circumstances in which he signed Ex.P-1.

14. As evident from the cross-examination of PW.1, he did not file the statement of account pertaining to the so called chit transaction entered into by the accused with the complainant's company. Apart from these, there is no dispute as evident from Ex.P-10 that when the complainant filed a Suit before the learned Additional Senior Civil Judge, seeking huge amount, it was decided that only an amount of Rs.25,000/- was due by the accused to the complainant's company. It may be the fact that the complainant filed an Appeal under Ex.P-10 before the learned III Additional District Judge, Kakinada but it is not the case of the complainant that he got any favourable order in the above case. It is to be noted that according to the evidence adduced by the

complainant coupled with Ex.P-7 – chit agreement, the value of the chit was Rs.1,00,000/- payable in 25 monthly installments. The averments in the complaint that accused paid some installments as on the date of participating in the auction and after becoming successful bidder, he paid some installments is nothing but vague. The chit installment amount per month after the accused took the prized amount was Rs.4,000/-. Ex.P-7 discloses that if a subscriber commits default consecutively for three installments, the complainant had every cause of action to terminate the chit agreement and to recover the amount in lump sum. So, Ex.P-1 was subsequent to completion of the chit auction successfully by the accused. It is not understandable as to why the complainant kept quiet without availing the legal remedies when the accused committed default for three consecutive installments. Under the circumstances, it is the duty of the complainant to connect Ex.P-1 with that of a legally enforceable debt. It is quietly evident that from the evidence that when the complainant filed a suit in O.S. No.157 of 2004 before the learned I Additional Senior Civil Judge, Kakinada the learned Additional Senior Civil Judge gave a finding that the complainant was entitled only for Rs.25,000/-. Though the complainant filed an Appeal before the learned III Additional District Judge, Kakinada

but nothing is clarified that whether he got any favourable order as against the decision of the learned Senior Civil Judge in O.S. No.157 of 2004. Needless to point out here that the judgment of the Civil Court is binding on the Criminal Court. The learned Magistrate elaborately discussed all these aspects. So, it is quite clear that the claim of the complainant before a competent Senior Civil Judge claiming huge amount of Rs.75,000/- was disbelieved by holding the amount due was only Rs.25,000/-. So, in such circumstances, it is really doubtful as to whether accused could have issued Ex.P-1 for a sum of Rs.75,000/-. So, important link is missing in the evidence to connect Ex.P-1 with that of a legally enforceable debt pertaining to the chit transaction. Though, there is no dispute about the factum of dishonor of cheque but the complainant has to establish that it was issued towards discharge of a legally enforceable debt. The evidence on record would not at all prove all those aspects. This Appeal is against an order of acquittal. Having gone through the judgment of the trial Court, as above, it cannot be held that the learned III Additional Judicial Magistrate of First Class decided the matter with any unreasonable grounds.

15. Having regard to the above, I am of the considered view that there are no reasons whatsoever to interfere with the judgment in Calendar Case No.101 of 2002, dated 20.06.2007, on the file of the Court of III Additional Judicial Magistrate of First Class, Kakinada. The complainant miserably failed to prove the offence under Section 138 of the NI Act against the respondent/accused beyond reasonable doubt.

16. **POINT No.3:** In the result, the Criminal Appeal is dismissed as such the judgment in Calendar Case No.101 of 2002, dated 20.06.2007, on the file of the Court of III Additional Judicial Magistrate of First Class, Kakinada stands confirmed.

Consequently, Miscellaneous Applications pending, if any, shall stand closed.

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**JUSTICE A.V.RAVINDRA BABU**

Date: 14.09.2023  
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