

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.414 OF 2006

JUDGMENT:

This Criminal Appeal, under Section 378(4) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is filed by the complainant against the judgment, dated 29.6.2001, in C.C.No.22 of 1999 on the file of the V Metropolitan Magistrate, Hyderabad whereunder and whereby, the accused was found not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and acquitted for the said offence under Section 255(1) Cr.P.C.

2. The facts of the case, in brief, are as follows:

There are business dealings in between the complainant and the accused from 1995 onwards in supplying veterinary biological and animal health products and in that connection, the accused was due an amount of Rs.3,23,042/- to the complainant. When the cheque issued by the accused was dishonoured by the Canara Bank, Jaipur Branch on the ground of insufficient funds, the complainant filed a complaint after issuing legal notice to the accused.

3. After the apprehension of the accused, he was furnished the copies of the documents, as required under Section 207 Cr.P.C. The accused was examined under Section 251 Cr.P.C. with regard to the allegations made in the complaint. The accused denied the same and pleaded not guilty. Therefore, the trial of the case was taken up by the trial Court.

4. To substantiate the case of the complainant, P.W.1 was examined and Exs.P-1 to P-14 were marked. On behalf of the accused, D.W.1 was examined and Exs.D-1 to D-4 were marked.

5. After closure of the evidence on complainant side, the accused was examined under Section 313 Cr.P.C. He denied the evidence on the side of the complainant.

6. The learned trial Judge, basing on the evidence adduced and after elaborate discussion, found the accused not guilty for the offence under Section 138 of the Negotiable Instruments Act and accordingly, acquitted him. Challenging the same, the complainant filed the present appeal.

7. Heard and perused the material available on record.

8. The trial Court mainly acquitted the accused on the following grounds:

There is a discrepancy in the evidence of the complainant regarding the legally enforceable debt, which was in question before the trial Court. Admittedly, prior to lodging of the complaint, a legal notice was issued by the complainant in which the amount mentioned is contrary to the amount mentioned in the subsequent notice. Further, the cheque in question was filled by the complainant subsequently for more amount with the date of his choice and fabricated the account copy under Ex.P-12 for more amount. The accused is able to prove that the amount for which the cheque was issued was not towards the legally enforceable debt. The accused also raised reasonable doubts by way of cross examination.

Hence, the impugned judgment warrants no interference of this Court. Further, in a case of acquittal, if the trial Court consists of two views and basing on one of the views, which is in favour of the accused, acquits the accused, normally, the appellate Court will not interfere with the judgment of the trial Court unless and otherwise, the evidence adduced by the prosecution clingingly points towards the guilt of the accused. In the present case, the learned trial Judge has considered

all aspects and acquitted the accused. Hence, this Court is not inclined to interfere with the judgment of acquittal of the trial Court and the appeal fails and is liable to be dismissed.

9. Accordingly, this Criminal Appeal is dismissed confirming the judgment, dated 29.6.2001, in C.C.No.22 of 1999 on the file of the V Metropolitan Magistrate, Hyderabad.

10. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

JUSTICE RAJA ELANGO

28.7.2016
AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

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