

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.703 OF 2015

JUDGMENT:

This Criminal Appeal, under Section 378(4) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is filed by the appellant- complainant against judgment, dated 08.01.2015, passed in Criminal Appeal No.8 of 2012 by the X Additional District & Sessions Judge, R.R. District, L.B. Nagar, whereby the learned District & Sessions Judge allowed the appeal by setting aside the conviction and sentence passed against the 1st respondent – accused by the Special Magistrate, Kukatpally at Miyapur, R.R. District, in CC No.210 of 2011 vide judgment, dated 15.12.2011.

The case of the prosecution, in brief, is that the 1st respondent borrowed some amount from the petitioner with a promise to repay the same and executed a promissory note and issued a cheque for Rs.50,000/-. When the 1st respondent failed to repay the amount, the petitioner deposited the cheque issued by the 1st respondent, in his bank, but the same was returned due to insufficient funds. Thereafter, the petitioner issued legal notice to the 1st respondent and as the 1st respondent failed to pay the amount, he filed the present case against the 1st respondent for the offence under Section 138 of the Negotiable Instruments Act (for short 'NI Act').

The case was taken on file for the offence under Section 138 of the N.I. Act and on appearance of the 1st respondent – accused, the charge was read over and explained to him in his language, for which he pleaded not guilty and claimed to be tried.

To substantiate the case of the prosecution, PW.1 was examined

and Exs.P-1 to P-7 were marked. After closure of the evidence on prosecution side, the accused was examined under Section 313 Cr.P.C. On behalf of the accused, none was examined and no documents were marked.

The learned trial Judge, basing on the evidence adduced, and also after elaborate discussion, found the 1st respondent - accused guilty of the offence under Section 138 of the NI Act, and accordingly, convicted and sentenced him to undergo simple imprisonment for a period of one month and also directed the 1st respondent to deposit a sum of Rs.50,000/- towards compensation to the complainant within one month, failing which the 1st respondent has to undergo simple imprisonment for one month, vide judgment, dated 15.12.2011. Challenging the same, the 1st respondent – accused filed appeal in CrI.A. No.8 of 2012 before the X Additional District & Sessions Judge, R.R. District. The lower appellate Court, after re-appreciation of the evidence, found the 1st respondent –accused not guilty of the above offence and allowed the appeal by setting aside the judgment of the trial Court and acquitted the 1st respondent - accused. Challenging the same, the present appeal is filed by the complainant.

On 19.07.2016 since there was no representation on behalf of the petitioner – complainant, the matter was directed to be posted today under the caption 'for dismissal.' Even today also, there is no representation on behalf of the petitioner.

Heard the learned counsel for the 1st respondent and perused the material available on record.

A perusal of the judgment of the lower appellate Court discloses that after taking into consideration the discrepancies in the evidence adduced by the prosecution and also considering the facts and

circumstances of the case, the learned Sessions Judge, acquitted the 1st respondent – accused.

Further, in a case of acquittal, if the Court concerned considered the two views and basing on one of the views, which is in favour of the accused acquits the accused, normally this Court will not interfere with the judgment of the Court concerned unless and otherwise, the evidence adduced by the prosecution clinchingly points towards the guilt of the accused. In the present case, the learned Sessions Judge considered all aspects and acquitted the accused. Hence, this Court is not inclined to interfere with the judgment of acquittal of the lower appellate Court and the appeal fails and is liable to be dismissed.

Accordingly, this Criminal Appeal is dismissed confirming the judgment, dated 08.01.2015, passed in CrI.A. No.8 of 2012 by the X-Additional District & Sessions Judge, (FTC), Ranga Reddy District. Miscellaneous petitions pending, if any, shall stand closed.

RAJA ELANGO, J

July 20, 2016
KTL