

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1482 OF 2008

JUDGMENT:

This Criminal Appeal is filed by the appellant-complainant by invoking the provision under Section 378(4) of the Code of Criminal Procedure (Cr.P.C.), challenging the order of acquittal, dated 18.07.2006, passed in CrI.A.No.35 of 2005, by the III Additional Sessions Judge (F.T.C.II), Khammam, whereby and whereunder the orders of conviction and sentence passed by the I Additional Judicial Magistrate of First Class, at Khammam, on 02.06.2005 in C.C.No.551 of 2001 were set aside and the accused was found not guilty for the offence under Section 138 of the Negotiable Instruments Act (for short, 'the Act') and he was acquitted under Section 255(1) Cr.P.C.

2. The brief facts, that are necessary for the disposal of the present Criminal Appeal, may be stated as follows:

The accused borrowed Rs.1,00,000/- on 05.05.2000 and Rs.1,20,000/- on 20.07.2000, from the complainant for his business, by executing pro-notes on the respective dates. On repeated demands, the accused issued a cheque bearing No.125164, dated 01.08.2001, for Rs.2,00,000/- on Canara Bank, Khammam, towards part payment of debt due to the complainant. When the complainant presented the said cheque in his account in State Bank of Hyderabad, Khammam, it was returned on 02.08.2001, with a memo, dated 01.08.2001, with the reason "insufficient funds". The complainant got issued a notice on 06.08.2001 demanding him to pay the amount of cheque. The accused failed to comply with the said notice, but gave reply with

false allegations denying his liability. Thus, he filed the complaint against the accused under Section 138 of the Act.

3. On appearance of the accused, he was examined under Section 251 Cr.P.C. and when the substance of accusation for an offence under Section 138 of the Negotiable Instruments Act was framed, read over and explained to the accused, he pleaded not guilty and claimed to be tried.

4. To substantiate its case, the prosecution got examined P.Ws.1 to 4 and marked Exs.P-1 to P-8. On behalf of defence, the accused himself got examined as D.W.1 and no documentary evidence was adduced.

5. After evaluating the oral and documentary evidence adduced by the prosecution, the trial Court found the accused guilty of the offence punishable under Section 138 of the Act and convicted and sentenced him to undergo Rigorous Imprisonment for a period of two (2) years and also to pay a sum of Rs.2,00,000/- to the complainant, by way of compensation within a period of two (2) months from the date of judgment and in default of payment of compensation amount, the accused shall undergo simple imprisonment for four (4) months. Aggrieved by the said judgment, the accused filed Crl.A.No.35 of 2005 before the III Additional Sessions Judge (F.T.C.II), Khammam, whereby the learned Sessions Judge, after re-appreciation of the evidence, allowed the said criminal appeal by setting aside the judgment of the trial Court vide judgment, dated 18.07.2006, and the accused was acquitted of the offence under Section 138 of the Act. Aggrieved by the said judgment, the complainant preferred the present appeal.

6. Heard both sides and perused the material available on record.

7. The lower appellate Court allowed the Crl.A.No.35 of 2005 by observing that Ex.A-4 – notice issued by the complainant was insufficient, illegal, vague and also unsustainable as the cheque was issued for Rs.2,00,000/- only, but the complainant has demanded to pay Rs.3,03,600/- including interest and thus, Ex.A-4 – notice was defective in nature. In view of the said defect, the appellate Court was of the view that when the statutory notice issued by the complainant is defective in nature and it bears a clear confusion in the mind of the respondent with regard to the payment of amount, then necessarily Section 138 of the Act does not attract.

8. As rightly observed by the lower appellate Court, the statutory notice issued by the appellant/complainant is defective in nature in view of the fact that the demand made by the complainant is more than the cheque amount issued by the accused. Hence, this Court is of the view that the judgment of the lower appellate Court is in accordance with law and there is nothing to interfere with the same.

9. Accordingly, the Criminal Appeal is dismissed. Miscellaneous petitions, if any pending, shall stand dismissed.

RAJA ELANGO, J

Date: 9th September, 2016

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