

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1095 OF 2008

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 the judgment, dated 19.06.2008, in C.C.No.1276 of 2004 on the file of X Additional Chief Metropolitan Magistrate, Secunderabad, 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:

The accused borrowed an amount of Rs.50,000/- from the complainant to meet his personal expenses. After some time, the accused issued cheque for repayment of the said amount. Thereafter, the complainant presented the said cheque for realization, but the same was dishonoured due to 'insufficient funds'. After issuing statutory notice as contemplated under Section 138 of the Negotiable Instruments Act, 1881, the complainant lodged a complaint.

3. After apprehension of the accused, he was furnished copies of 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.Ws.1 and 2 were examined and Exs.P-1 to P-6 were marked. On behalf of the accused, D.Ws.1 and 2 were 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 grounds that the complainant failed to serve notice on the accused; that the complainant though apprehended that the accused managed the postal authorities for non-service of notice on him, he failed to prove the same by placing cogent evidence to hold that the accused has managed the postal authorities. Therefore, the said observation of the trial Court is in accordance with law. Since the complainant failed to establish the service of notice on the accused, the cause of action does not arise. Further, in a case of acquittal, if the trial Court considered 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 19.06.2008, in C.C.No.1276 of 2004 on the file of X Additional Chief Metropolitan Magistrate, Secunderabad.

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

26.08.2016
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JUSTICE RAJA ELANGO

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Date: 26.08.2016

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