

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.335 of 2008

JUDGMENT:

This criminal appeal is preferred by the appellant/complainant by invoking the provision under Section 378(4)(5)(1) of the Code of Criminal Procedure being aggrieved by the judgment, dated 18.10.2007, rendered in C.C.No.1437 of 2004, by the II Additional Chief Metropolitan Magistrate, Hyderabad, whereby and whereunder the learned Magistrate found the 1st respondent/accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo simple imprisonment for a period of six (6) months and also to pay a fine of Rs.3,000/-, in default to undergo simple imprisonment for a period of one (1) months for the said offence.

2. The case of the prosecution, in brief, is as follows:

The accused requested the complainant among other debts for a sum of Rs.60,000/- for his business purpose and the said amount was advanced by the complainant on 19.12.2001. The accused received Rs.60,000/- in cash by executing a receipt and also promissory note, dated 19.12.2001, from the complainant with a promise to discharge the same within short period and to discharge of that liability. On repeated requests of the complainant, the accused finally issued a cheque bearing No.989440, dated 16.04.2004, drawn on Syndicate Bank, M.G. Road Branch, Secunderabad. The complainant presented the said cheque for clearance through his bankers i.e., Tirumala Co-operative Bank, Abids, Hyderabad, after repeated oral requests of the accused finally on 21.07.2004, but the said cheque was

returned on 22.07.2004 stating 'FUNDS INSUFFICEINT'. The complainant got issued legal notice on 12.08.2004 and the accused received the notice and acknowledged the receipt on 14.08.2004 and gave a reply noticed, dated 25.08.2004, with false and baseless reasons and failed to make payment, and as such, the accused is liable for the offence punishable under Section 138 of the N.I. Act.

3. After filing of the charge sheet, the trial Court took cognizance of the case under Section 138 of the N.I. Act against the accused.

4. On appearance of the accused, the charge under Section 138 of the N.I. Act was framed and read over and explained to him, for which he pleaded not guilty and claimed for trial.

5. During the course of trial, P.Ws.1 & 2 were examined and Exs.P-1 to P-8 were marked on behalf of the prosecution. On behalf of the accused, D.Ws.1 & 2 were examined and no documents were marked.

6. On appreciation of the oral and documentary evidence, the trial Court found the accused guilty of the offence under Section 138 of the N.I. Act, and accordingly convicted and sentenced him as stated above. Aggrieved by the conviction order, the present appeal is preferred by the appellant/complainant.

7. Heard and perused the entire material available on record.

8. Sri S. Sreenivasa Sarma, learned counsel for the 1st respondent/accused submitted that during the pendency of this criminal appeal, the 1st respondent herein also filed Crl.A.No.428 of 2007 before the VII Additional Metropolitan Sessions Judge,

Hyderabad, and the learned Sessions Judge has also dismissed the said criminal appeal by confirming the conviction and sentence recorded by the trial Court in C.C.No.1437 of 2004, dated 08.10.2007.

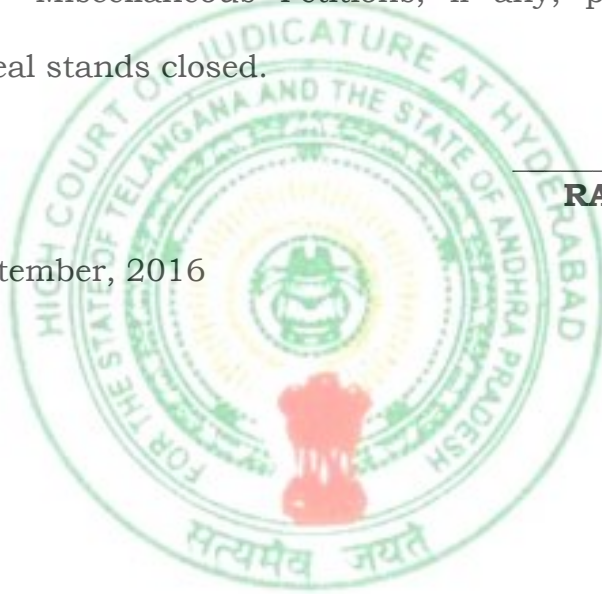
9. Considering the said submission, this Court is of the view that the present criminal appeal is not maintainable and it has become infructuous in view of the confirmation by the lower appellate Court.

10. Accordingly, the Criminal Appeal is dismissed as infructuous. Miscellaneous Petitions, if any, pending in this criminal appeal stands closed.

RAJA ELANGO, J

Date: 9th September, 2016

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