

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.357 OF 2007

JUDGMENT:

This criminal appeal is preferred by the appellant - complainant company by invoking the provisions under Section 378 (3) & (1) of the Code of Criminal Procedure, being aggrieved by the judgment, dated 14.12.2006, rendered in CrI.A. No.76 of 2006, by the III Additional Metropolitan Sessions Judge, City Criminal Courts, Hyderabad, whereby the learned Sessions Judge allowed the appeal filed by the accused – 1st respondent, setting aside the judgment, dated 31.01.2006, passed in CC No.944 of 2000 by the II-Additional Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad, whereby the learned Magistrate found the accused – 1st respondent guilty of the offence punishable under Section 138 of the Negotiable Instruments Act (for short, 'the Act') and sentenced him to undergo simple imprisonment for a period of six (6) months and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for one month.

The brief facts of the case are that the de facto complainant is a Finance Company from which the 1st respondent - accused borrowed certain amounts. In discharge of the said loan, the accused issued two cheques to the complainant company. When the complainant company presented the said cheques in his Bank for realization, the same were dishonoured on the ground of 'insufficient funds'. Then the complainant company issued notice to the accused, which was returned un-served with an endorsement 'No such addressee.'" The grievance of the complainant company is that though the notice was sent to the correct address of the accused, he deliberately avoided to receive the same.

Hence, he filed a private complainant against the accused for the offence punishable under Section 138 of the Act.

The case was taken on file for the offence under Section 138 of the Act and on appearance of the accused, the said charge was read over and explained to him, for which he pleaded not guilty and claimed to be tried.

To prove its case, the prosecution examined PWs.1 and 2 and marked Exs.P.1 to P.17, besides marking MO.1. On behalf of the accused, DW.1 was examined and Ex.D1 was marked.

After evaluating oral and documentary evidence adduced by the prosecution witnesses, the trial Court found the 1st respondent – accused guilty of the offence punishable under Section 138 of the Act, and accordingly convicted and sentenced him as stated above. Aggrieved by the same, the 1st respondent – accused preferred Crl.A. No.76 of 2006 before the III-Additional Metropolitan Sessions Judge, Hyderabad. The learned Sessions Judge, after re-appreciation of evidence on record, allowed the appeal, setting aside the judgment of the trial Court and acquitted the accused for the offence under Section 138 of the Act. Aggrieved by the same, the complainant company preferred the present appeal.

Heard and perused the material available on record.

The lower appellate Court, while acquitting the 1st respondent-accused, observed as follows:

“Ex.P11 is the office copy of notice Dt:-30.9.2004 addressed to the appellant/ accused furnishing the residential address as H.No.1-1-16-12-C, Jawaharnagar, Hyderabad. It is in the evidence of Pw-1 that the original of Ex.P11 notice containing the above said residential address of the appellant/ accused was sent in Ex.P13 postal cover which

was returned with endorsement no such person in the house number mentioned in Ex.P13 postal cover. On Ex.P.13 the address is H.No.TRT 164, Jawaharnagar, Chikkadapally, Hyderabad, but not address noted on office copy of notice marked as Ex.P.11.

Even according to Pws.1 and 2 the residential address of the father-in-law of the appellant/accused where he used to stay with his wife prior to disputes resulted in issuance of Ex.P11 notice is H.No.TRT 162, Jawaharnagar, Hyderabad. It is the case of the first respondent/complainant that they sent Ex.P11 notice which contains the residential address of the accused to the residential address of his father in law as furnished by the appellant/accused. But as can be seen from Ex.P13 the address furnished is not even the residential address of the father in law of the appellant/accused. It is no doubt true the appellant/accused as Dw-1 admitted during cross-examination that in the same building there are 4 flats with house Nos.TRT 161 to 164 and that his father-in-law resides in TRT 162, Jawaharanga, RTC X roads, Hyderabad-20."

From the above, it is evident that notice was sent to the proper address, where the 1st respondent-accused resides.

Learned counsel for the appellant relied on a judgment rendered by a Three-Judges Bench of the Hon'ble Supreme Court in C.C. Allavi Haji v. Palapetty Muhammed¹ wherein it was observed that when the notice was sent to the proper address and the same was not served for any other reasons, it should be presumed that the notice is served on the accused.

In the judgment relied upon by the learned counsel for the appellant, the said issue was decided in the year 2007, whereas the present case relates to the year 2000, and the judgment under appeal was rendered in the year 2006 i.e. on 14.12.2006, much prior to the said law laid down by the Hon'ble Apex Court in the aforesaid judgment. Hence, this Court is of the view that there is nothing to interfere with the judgment passed by the lower appellate Court.

¹ 2007 (6) Supreme Court Cases 555

Another contention raised by the learned counsel for the appellant is that the accused has not taken the plea of non-service of notice to him in the grounds of appeal before the first appellate Court, therefore, what was not pleaded in the grounds of appeal, cannot be argued and hence, the lower appellate Court could not have passed an order basing on the said argument.

Absolutely, there are no merits in the contention of the learned counsel for the appellant for the reason that, even in a case, where the counsel has not argued any points, which are raised by the defence or by the prosecution agency, the Court can adjudicate the issue on new points, which are necessary to decide the controversy. Hence, the said contention of the learned counsel for the appellant is rejected.

In view of the above discussion, the Criminal Appeal is dismissed. The miscellaneous petitions pending, if any, shall also stand closed.

September 26, 2016.
KTL

RAJA ELANGO, J