HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1623 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 16.05.2008, passed in C.C.No.213 of 2007 by the Judicial Magistrate of First Class, Gadwal, whereby and whereunder the learned Magistrate found the accused–1st respondent not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and acquitted him for the same.

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

The complainant and the accused, who are neighbours and relatives, are partners in M/s Balaji Service Station at Ieeja Village, Gadwal Mandal, since 1982 and they are dealing with selling of fuel under Hindustan Petroleum Corporation Limited as their dealers. On 01.04.2000, both the complainant and the accused entered into a partnership deed by admitting some other persons as partners into the firm. During the year 2006, when the accused, who is the Managing Partner of the firm, proposed to sell away the land situated at Manopad Village, Alampur Mandal, some differences cropped up between the complainant and the accused and in that regard, a suit was also filed against the complainant before the Junior Civil Judge's Court, Alampur, in respect of the said land. Due to such differences, the complainant intended to withdraw his partnership from the firm and they arrived to an agreement to dissolve the partnership. On 16.03.2007, the partnership firm was dissolved in the presence of elders and other partners wherein the accused agreed to pay an amount of Rs.26,00,000/- to the complainant for his withdrawal from the partnership. The accused issued a post-dated cheque, dated 22.03.2007, on 16.03.2007 for Rs.6,00,000/-. He also issued another four post dated cheques for Rs.5,00,000/- each, dated 20.07.2007, 20.10.2007, 20.01.2008 and 20.04.2008 respectively drawn on State Bank of Hyderabad, Gadwal Branch, Mahabubnagar District. On 26.03.2007, when the cheque for Rs.6,00,000/- was presented in the Bank, the same was dishonoured due to insufficient funds. Thereafter the complainant got issued a legal notice, dated 28.03.2007, to the accused through his counsel to repay the cheque amount within 15 days and the same was received by the accused on 07.04.2007. The accused got issued a reply notice on 07.04.2007 denying the material contents of the demand notice of the complainant. The accused failed to comply with the demand notice of the complainant within the stipulated period of 15 days. Thus, the accused committed an offence punishable under Section 138 of the Negotiable Instruments Act.

3. The accused 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 explained to the accused, he pleaded not guilty and claimed to be tried.

4. To substantiate the case of the prosecution, the complainant himself examined as P.W.1 and Exs.P-1 to P-12 were marked.

5. After closure of the evidence on the prosecution side, the accused was examined under Section 313 Cr.P.C., he denied the incriminating evidence and on behalf of the accused, none was examined and no documents were marked.

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. It is not necessary to reproduce the entire case of the prosecution and the ground on which the learned trial Judge acquitted the accused is that even on the date of cross-examination of P.W.1, the complainant and the accused continued to be partners in a company called M/s. Balaji Service Station along with three others. During the period of 2004-2006, the balance sheets of the firm also clearly reveals that both the complainant and accused are partners in the same company and it also discloses the financial transactions between P.W.1 and the accused. The accused is also closely related to the complainant i.e., the accused is the maternal uncle of the complainant. The documents filed by the complainant himself under Exs.P-14 and P-15 disclose that by the date of taking of the cheques Exs.P-1 to P-3 from the accused, there was no debt or liability incurred by the accused payable to the complainant. The learned trial Judge observed that the complainant failed to establish the dissolution of partnership as pleaded by him and it was found that the case of the complainant was highly unbelievable and highly improbable in

view of their continued partnership even after the issuance of the cheques concerned.

9. In a criminal case, when the trial Court acquitted the accused by giving the benefit in favour of the accused, normally the appellate Court will not interfere unless the entire evidence is clinchingly pointing only towards the guilt of the accused. The present case is concerned with the cheques issued by the accused to the complainant and the learned trial Judge has considered the case of the accused.

10. By observing as above, the learned trial Judge, acquitted the accused for the offence under Section 138 of the Negotiable Instruments Act, 1881. Hence, this Court is of the view that the order of acquittal recorded by the trial Court against the accused–respondent is in accordance with law and there is nothing to interfere with the same.

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

RAJA ELANGO, J

Date: 27th August, 2016

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