

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL Nos.1776, 1777 & 1778 OF 2005

COMMON JUDGMENT:

These Criminal Appeals, under Section 378(4) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the common judgment, dated 24.8.2005, in Criminal Appeal Nos.189 of 2002, 190 of 2002 and 191 of 2002 on the file of the learned Sessions Judge, Krishna Division, Machilipatnam where under and whereby, the learned Sessions Judge allowed the appeals filed by the accused against the common judgment, dated 31.10.2002, in C.C.Nos.197 of 2001, 198 of 2001 and 199 of 2001 on the file of the II Additional Judicial First Class Magistrate, Machilipatnam, and found A-2 represented by A-1 not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and accordingly, acquitted for the said offence.

2. The case of the complainant in all the three cases i.e., C.C.Nos.197 of 2001, 198 of 2001 and 199 of 2001 is that the complainant converted Ac.27.00 cents of land, out of which Ac.14.66 cents belongs to him and Ac.12.00 cents of land belongs to his brother-in-law, into 13 prawn tanks and reared prawns in the tanks. While so, from 1996 onwards, the accused took the tanks on lease. From the year 2000, the accused agreed to pay an amount of Rs.7,00,000/- towards lease and on 9.1.2000, he paid an amount of Rs.4,00,000/- and he agreed to pay the balance amount of Rs.3,00,000/- on or before 20.5.2000, but the accused failed to pay the same as per the agreement. The accused approached the complainant on 21.5.2000 and represented that he could not get the amount of Rs.3,00,000/-. As such, the accused issued three cheques of Rs.1,00,000/- each and asked the complainant to present one after

another on 15th July, 15th August and on 15th September, 2000. Accordingly, the complainant presented first cheque on 17.7.2000 for collection through his account in the same bank on 17.7.2000 itself in State Bank of India (Agricultural Development Branch), Avanigadda and the cheque was returned along with a written memo by intimating that there were no sufficient funds in the account of the accused. Thus, the cheque was dishonoured due to insufficient funds. The complainant got issued a registered notice to the accused on 24.7.2000 and the accused acknowledged the same on 29.7.2000. Instead of arranging to pay the cheque amount, the accused, *mala fide*ly in order to escape from his criminal liability, issued a reply through his Advocate with false allegations and thereby, committed an offence punishable under Section 138 of the Negotiable Instruments Act. Hence, C.C.No.197 of 2001 was filed by the complainant.

Subsequently, the complainant presented the 2nd cheque bearing No.337269 for an amount of Rs.1,00,000/- issued by the accused in the State Bank of India (Agricultural Development Branch), Avanigadda for collection on 21.8.2000, but the said cheque was also dishonoured and the bank authorities informed the complainant that the cheque was dishonoured due to insufficient funds. Thereupon, on 3.9.2000, the complainant issued a legal notice to the accused demanding to repay the cheque amount. The accused received the said notice on 6.9.2000. The accused, instead of paying the amount, sent a reply notice, dated 18.9.2000, stating his old false story. Since the accused failed to pay the cheque amount, he is liable for punishment under Section 138 of the Negotiable Instruments Act. Hence, the complainant filed C.C.No.198 of 2001.

Subsequently, the complainant presented the 3rd cheque bearing No.337270 for an amount of Rs.1,00,000/- issued by the accused in State Bank of India (Agricultural Development Branch), Avanigadda for

collection on 25.9.2000. The bank authorities issued a memo stating that the cheque was dishonoured due to insufficient funds. Then, the complainant got issued a registered notice, dated 4.10.2000, demanding the accused to pay the cheque amount. The accused sent a reply legal notice alleging the same false story on 13.10.2000 and further, averred in the notice that he himself informed his bank not to honour the three cheques, which were issued by him. Thus, the accused is liable for punishment under Section 138 of the Negotiable Instruments Act. Hence, the complainant filed C.C.No.199 of 2001.

3. The learned Magistrate took cognizance of all the three cases under Section 138 of the Negotiable Instruments Act against A-1 representing A-2 firm and issued summons to the accused and when the accused appeared, he was examined under Section 251 Cr.P.C. by the learned Magistrate.

4. The complainant himself examined as P.W.1 and got examined P.Ws.2 to 4 in all the three cases and got marked Exs.P-1 to P-5 in C.C.No.197 of 2001, Exs.P-6 to P-10 in C.C.No.198 of 2001 and Exs.P-11 to P-15 in C.C.No.199 of 2001, and Exs.P-16 to P-21 in all the three cases.

5. After closure of the evidence on the side of the complainant, the accused was examined under Section 313 Cr.P.C. in all the three cases for which, he denied the incriminating evidence by reporting defence. On behalf of the accused, D.W.1 was examined and Ex.D-1 was marked in all the three cases.

6. The trial Court, after appreciating both oral and documentary evidence on record, found A-1, who represented A-2 firm, guilty of the offence punishable under Section 138 of the Negotiable Instruments Act in all the three cases and convicted him under Section 255(2) Cr.P.C. and sentenced him to undergo rigorous imprisonment for one

year each and to pay compensation of Rs.1,20,000/- each to P.W.1, in default, to suffer simple imprisonment for six months each. The trial Court held that the sentence of imprisonment of one year in all the three cases shall run concurrently. Challenging the same, the accused preferred Criminal Appeal Nos.189 of 2002, 190 of 2002 and 191 of 2002 on the file of the learned Sessions Judge, Krishna Division, Machilipatnam and *vide* common judgment, dated 24.8.2005, the same were allowed setting aside the conviction and sentence imposed by the trial Court in C.C.Nos.197 of 2001, 198 of 2001 and 199 of 2001 and found A-2 represented by A-1 not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and accordingly, acquitted for the said offence. Challenging the said common judgment, the complainant filed the present Criminal Appeals.

7. The lower appellate Court acquitted the accused on the ground that the cheques in question were issued by the accused in the capacity of Proprietor of Penguin Aqua Systems owned by him whereas in the complaint, it was clearly stated that the accused, in his personal capacity, issued the said three cheques. Even the evidence of P.W.1 would go to show that the agreement for aqua culture is for Ac.27.00 cents of land and the same is between an individual and the complainant. Hence, the lower appellate Court acquitted the accused considering the fact that the complainant failed to prove that there was a legally enforceable debt by the accused and furthermore, the account does not stand in the name of accused, but stands in the name of the company called Penguin Aqua Systems.

8. Heard and perused the material available on record.

9. The said observation of the lower appellate Court in acquitting the accused is in accordance with law. Hence, the impugned common judgment does not warrant interference of this Court and the appeals

fail and are liable to be dismissed.

10. Accordingly, all the Criminal Appeals are dismissed confirming the common judgment, dated 24.8.2005, in Criminal Appeal Nos.189 of 2002, 190 of 2002 and 191 of 2002 on the file of the learned Sessions Judge, Krishna Division, Machilipatnam.

11. Miscellaneous petitions pending, if any, in these Criminal Appeals shall stand closed.

JUSTICE RAJA ELANGO

29.7.2016

AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

—

CRIMINAL APPEAL Nos.1776, 1777 & 1778 OF 2005

Date: 29.7.2016

AMD