

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1182 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 09.07.2008, in C.C.No.1734 of 2004 on the file of III Additional Metropolitan Magistrate, Hyderabad, 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 complainant is Class-I Contractor and accused is his friend. In the month of October, 2003, accused borrowed an amount of Rs.3.00 lakhs from the complainant and failed to repay the same. Finally, on demand, the accused issued a cheque for the said amount and when the complainant presented the said cheque, it was dishonoured due to 'insufficient funds'. Thereafter, the complainant got issued legal notice on 09.09.2004. The accused issued reply denying the averments made in the legal notice. After issuing legal notice, the complainant filed the complaint.

3. After the apprehension of the accused, he was furnished the copies of the 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.W.1 was examined and Exs.P-1 to P-9 were marked. On behalf of the accused, D.W.1 was examined and Exs.D-1 to D-34 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 of the offence punishable 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 though the accused admitted issuance of Ex.P.1-cheque in favour of the complainant, which was misplaced, he repaid the entire amount in cash and in proof of which there is correspondence, which are marked as Exs.D.1 and D.2. The complainant admitted his signature in Ex.D.2. Though accused admitted issuance of Ex.P.1-cheque, the complainant failed to prove that it was issued for legally enforceable debt. The complainant though admitted in his cross-examination that he did not give any notice to the accused and that the contents in Exs.D.1 and D.2 are fabricated, he failed to disprove the contents in Ex.D.1. Hence, the impugned judgment warrants no interference

by this Court. 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 clings 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 09.07.2008, in C.C.No.1734 of 2004 on the file of III Additional Chief Metropolitan Magistrate, Hyderabad.

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

26.08.2016
YVL

JUSTICE RAJA ELANGO

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Date: 26.08.2016

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