HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL APPEAL Nos.776,778,797,799,817,818, 822,831,839, 1014,1140 and 1141 of 2016

COMMON JUDGMENT:

Since the issue involved in all these appeals is similar, all these matters are heard together and being disposed of by this common judgment.

These Criminal Appeals are filed under Section 378(4) Cr.P.C. after obtaining Special Leave of the Court challenging the Calendar and Judgment dt.18.04.2016 in Criminal Appeal Nos.138, 135, 137, 138, 135, 135, 137, 137, 138, 136, 136, 136 of 2014 respectively passed by the I Additional Metropolitan Sessions Judge, Hyderabad, acquitting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the Act").

The appellants in all the appeals filed Calender Cases for dishonour of various cheques, the details of which are given below;

Sl.No. (1)	Criminal Appeal filed before this Court (1-A)	Crl.A.No. filed before I AMM (2)	CC No (3)	Cheque No. (4)	Amount (5)	Date of dishonour (6)
1.	776/2016	138/14	34/11	289958 289959	98,86,700 49,43,350	*13.11.2009*
2	778/16	135/14	33/11	289953 289957	98,86,700 98,86,700	*13.11.2009*

3	797/16	137/14	50/11	748740 748741 748742	15,00,00,000 15,00,00,000 13,68,83,335	*28-5-10*
4.	799/16	138/14	34/11	289958 289959	98,86,700 49,43,350	*13.11.2009*
5	817/16	135/14	33/11	289953 289957	98,86,700 98,86,700	*13.11.2009*
6	818/16	135/14	33/11	289953 289957	98,86,700 98,86,700	*13.11.2009*
7	822/16	137/14	50/11	748740 748741 748742	15,00,00,000 15,00,00,000 13,68,83,335	*28-5-10*
8.	831/16	137/14	50/11	289958 289959	98,86,700 49,43,350	*13.11.2009*
9	839/16	138/14	34/11	748740 748741 748742	15,00,00,000 15,00,00,000 13,68,83,335	*28-5-10*
10	1014/16	136/14	44/11	748740 748741 748742	15,00,00,000 15,00,00,000 13,68,83,335	28-5-10
11	1140/16	136/14	44/11	748740 748741 748742	15,00,00,000 15,00,00,000 13,68,83,335	28-5-10
12.	1141/16	136/14	44/11	748740 748741 748742	15,00,00,000 15,00,00,000 13,68,83,335	28-5-10

It is alleged that the unofficial respondents/Accused in all these appeals, are the company and its Directors/Officials, who are looking after the day-to-day affairs of the company, issued cheques in favour of the appellant in discharge of their legally enforceable debt and on presentation of the said cheques, they were dishonoured with an endorsement 'insufficient funds" and a notice was issued within 30 days from the date of receipt of the return memo along with dishonoured cheques in compliance of Section 138(1) proviso (b) of the Act. But, the respondents did not comply with the legitimate demand by paying the amount covered by the dishonoured cheques. Therefore, the appellant-complainant filed complaints before X Special Magistrate, Hyderabad, to punish the Accused and to award compensation. The Special Magistrate after securing the presence of the accused, examined them under Section

251(2) Cr.P.C., explaining the gist of the acquisition, however, they denied the same and claimed to be tried.

During trial, on behalf of prosecution, the complainant and others were examined on its behalf to prove the guilt of the accused and after closure of evidence on behalf of the prosecution, the accused were examined under Section 313 Cr.P.C. explaining the incriminating material that appeared against them in the evidence of prosecution witnesses, however, they denied the same while contending that those cheques were issued as security. The trial Court disbelieved the contention of the respondents/Accused and found them guilty for the offence punishable under Section 138 of the Act, vide judgments dated 07.01.2014.

Aggrieved by the above calendar and Judgment, the respondents/Accused filed the above Criminal Appeals before the I Additional Metropolitan Sessions Judge, as shown in Column No.2 of the above Table and upon hearing the arguments of both the counsel, the lower appellate Court acquitted all the accused by placing reliance on a judgment reported in *Krishna Janardhan Bhat v. Dattatraya G. Hedge*[1], wherein it was held in Para No.3 as follows:

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[1] (2008) (4) SCC 54

> "*Section 139 of the Act merely rises a presumption in regard to the second aspect of the matter. Existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability. Therefore, the appellant based on presumption cannot claim relief and set aside the conviction and sentence imposed by the trial Court against the respondents.*"

In the very same judgment, the Appellate Court observed that in view of the finding recorded under Section 139 of NI Act, the Court did not record any finding as to the liability of the Directors of the company and accordingly acquitted them.

Aggrieved by the Calendar and Judgments in all the above Criminal Appeals referred to in the column No.2 of the table, the present Criminal Appeals are filed by the appellant-complainant, mainly on the ground that the principle laid down in *Krishna's* case in Para No.26 of the Judgment, referred to supra, is overruled by a Full Bench Judgment of Apex Court in *Rangappa v. Sri Mohan*[2] and contended that the Directors are liable equally along with the company, who are looking after day-to-day affairs of

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[2] (2010) 11 SCC 441

the company, however, the lower appellate Court did not consider the law laid down in *Rangappa's* case (supra 2) in proper perspective and committed an error.

During hearing, Sri Avinash Desai, learned counsel for appellant-complainant reiterated the contentions raised in the grounds of appeal and drawn the attention of this Court to a principle laid down in *Rangappa's* case (supra 2), which overruled the law declared by the Apex Court in *Krishna's* case (supra 1) and in such a case, the Court has to remand the matter to the lower appellate Court, placing reliance on a judgment reported in *Shankerlal vs. State of Rajasthan and another*[3] and *State of Orissa v. Nalinikanta Muduli*[4] and hence, requested to remand the matters to the lower appellate Court.

Learned counsel for the respondent No.1/State of Telangana supported the finding recorded by the Trial Court, whereas the learned counsel appearing for some of the Directors contended that the Directors are not liable as the company is the accused and no cheques were issued by them in individual capacity and, therefore, no criminal liability can be fastened against the Directors of the Company in individual capacity.

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[3] (2005)12 SCC 330
[4] (2004) 7 SCC 19

Admittedly, the trial Court found all the respondents/Accused guilty for the offence under Section 138 of the Act and sentenced them holding that the Directors are also liable for the offence under Section 138 of the Act.

Aggrieved by the Judgment, the respondents/Accused filed Criminal Appeals as shown in column No.2, but the lower appellate Court did not record any finding with regard to the liability of the Directors with reference to Section 141 of the Act and aggrieved by the said finding, no separate appeals are preferred by the Directors of the Company before this Court. Therefore, in the absence of any finding regarding the liability of the Directors in the calendar and judgment of lower appellate Court, this Court cannot accept the contention of the learned counsel appearing for the Directors. Since the lower appellate Court did not give any finding on the issue of liability of the Directors, which clearly indicates that the Appellate Court did not evince any interest to determine the liability of the Directors of the Company, and on that ground, the present Criminal Appeals filed by the appellant-complainant cannot be dismissed.

The lower appellate Court mainly relied on the principle in *Krishna's* case (supra 1), but the principle laid down therein was overruled by a Full Bench Judgment of the Apex Court in *Rangappa*'s case (supra 2), wherein it was held that Section 139 of the Act does not indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat's case (supra 1) may not be correct. However, this does not in any way cast any doubt on the correctness of the decision in that case, since it was based on the specific facts and circumstances therein. Thus, the principle laid down in *Krishna*'s case (supra 1) with regard to presumption under Section 139 of the Act is no more *res integra* and placing reliance on such overruled judgment of Apex Court, the lower appellate Court allowed the Criminal Appeals thereby acquitted the Directors, which is an error apparent on the face of the record and the said judgments cannot be sustained under law. When the lower appellate Court relied on the overruled judgment and acquitted the accused, the course open for this Court is to remand the matters to the appellate Court for fresh decision, in view of the law declared by the Apex Court in *Nalinikanta Mudulu's* case (supra 4), wherein it was held as follows:

> "It is strange that a decision which has been overruled by this Court nearly quarter of a century back was cited by the Bar and the court did not take note of this position and disposed of the matter placing reliance on the said overruled decision. It does not appear that the decision of this Court reversing the judgment of the High Court was brought to the notice of the learned Single Judge who was dealing the matter. It is a very unfortunate

situation that learned counsel for the accused who is supposed to know the decision did not bring this aspect to the notice of the learned Single Judge. Members of the Bar are officers of the Court. They have a bounden duty to assist the Court and not mislead it. Citing judgment of a Court which has been overruled by a larger Bench of the same High Court or this Court without disclosing the fact that it has been overruled is a matter of serious concern. It is one thing that the Court notices the judgment overruling the earlier decision and decides on the applicability of the later judgment to the facts under consideration on it. It also does not appear that learned counsel appearing for the respondent before the High Court did not refer to judgment of this Court. All this shows that the matter was dealt with very casually. From the judgment of the High Court it is noticed that the hearing was concluded on 13.3.2003 and the judgment was delivered on 25.4.2003. It was certainly the duty of the counsel for the respondent before the High Court to bring to the notice of the Court that the decision relied upon by the petitioner before the High Court has been overruled by this Court. Moreover, it was duty of the learned counsel appearing for the petitioner before the High Court not to cite an overruled judgment. It is not that the decision is lost in antiquity. It has been referred to in a large number of cases since it was rendered. It has been referred to recently in many cases e.g. S.M. Datta v. State of Gujarat (2001 (7) SCC 659), M.C. Abraham V. State of Maharashtra (2003 (2) SCC 649), Union of India v. Prakash P. Hinduja (2003 (6) SCC 195) and earlier in many oft cited decisions in State of Haryana v. Bhajan Lal (1992 Supp. (1) SCC 335), Janta Dal v. H.S. Chowdhary (1992 (4) SCC 305), Union of India v. W.N. Chadha (1993 Supp. (4) SCC 260) and State of Bihar v. P.P. Sharma (1992 Supp. (1) SCC 222). We can only express our anguish at the falling standards of professional conducts. Impugned judgment of the High Court is set aside. We remit the matter back to the High Court so that it can deal the petitions afresh and decide on merits taking into account the decision and all other relevant aspects of this Court. All the petitions before the High Court which were disposed of by the impugned judgment shall stand restored to its original position to be dealt with in accordance with law."

In *Gajanand Goyal's* case, the Apex Court held as follows:

"having regard to the undisputed position that the trial Court as well as the High Court passed the Orders based on ' common cause'. A registered society which has been overruled by this Court in P. Ramachandra Rao, it is not possible to sustain the impugned judgment. Merely because, the trial court was not aware of the judgment of this Court in P. Ramachandra Rao, it cannot be said that the judgment was not in operation and its effect could be

> taken away. In this view, the impugned order passed by the High Court affirming the order made by the trial Court is set aside. "

In fact, there is no provision for remanding the matter to the lower appellate Court except for re-trial, but, still I am bound by the above said judgment of the Apex Court and following the principles laid down therein, the matters are remanded to the lower appellate Court for fresh decision on the facts of each case.

Accordingly, all these appeals are allowed, the common Calendars and Judgment dt.18.04.2016 passed in the Criminal Appeals shown in Column No.2 of the table are set aside and the matters are remanded to the lower appellate Court for fresh consideration and disposal keeping in mind the law declared by the Apex Court referred above and any other law in this regard. The lower appellate Court is directed to dispose of the matter, as expeditiously as possible, in any event not later than 6 months from the date of receipt of a copy of this common judgment.

As a sequel, miscellaneous petitions, if any, pending in these Criminal Appeals, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 19-04-2017.

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Dt. 19-04-2017

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