THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL APPEAL No.1244 OF 2007

JUDGMENT:

This appeal is filed under Section 378(4) of Cr.P.C. by the complainant assailing the judgment dated 21.02.2007 in C.C.No.126 of 2004 on the file of the Court of the II Additional Chief Metropolitan Magistrate, Hyderabad, wherein and whereby the first respondent-accused was found not guilty for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and consequently, acquitted him of the said offence.

2. For the sake of convenience, the parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the present appeal are briefly as follows: The accused borrowed an amount of Rs.1,50,000/- from the complainant as hand loan in June, 2003. In discharge of the said debt, the accused issued a cheque bearing No.487658 dated 18.12.2003 in favour of the complainant for an amount of Rs.1,50,000/- drawn on the Agrasen Co-operative Urban Bank Limited, Siddiamberbazar, Hyderabad. The complainant presented the cheque for collection and the same was returned with an endorsement 'insufficient funds' and the amount in words and figures differs. The complainant got issued a statutory notice directing the accused to pay the amount covered under the cheque. On 12.01.2004 the accused issued a reply notice with false and frivolous allegations. Having no other alternative, the complainant filed a complaint under Section 200 of Cr.P.C. on the file of the II Additional Chief Metropolitan Magistrate, Hyderabad,

against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'). The learned Magistrate, after satisfying himself with the material placed before the Court, has taken the case on file and numbered it as C.C.No.126 of 2004 and issued summons to the accused. On appearance of the accused, copies of all documents were furnished to him as contemplated under Section 207 Cr.P.C. The accused was examined under Section 251 Cr.P.C, however, the accused denied the allegation and claimed to be tried.

4. To bring home the guilt of the accused, the complainant got examined himself as PW.1 and got marked Exs.P.1 to P.8. After completion of the complainant side evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating material available against him, which he denied. On behalf of the defence, DW.1 was examined and Exs.D.1 and D.2 were marked.

5. Basing on the oral, documentary evidence and other material available on record, the trial Court arrived at a conclusion that the complainant failed to prove the guilt of the accused for the offence punishable under Section 138 of the N.I. Act and consequently, acquitted him of the said offence. Hence, the present appeal is filed by the complainant.

6. Sri Kota Keerthi Kiran, Advocate, representing Sri R.N.Hemendranath Reddy, learned counsel for the appellant-complainant, strenuously submitted that the trial Court has misconstrued the scope of Section 139 of N.I. Act, even though the accused admitted his signature on Ex.P.1 cheque. He further

submitted that the trial Court acquitted the accused on assumptions and presumptions, which is not permissible under law. He also submitted that the findings recorded by the trial Court are not based on evidence much less legally admissible evidence; therefore, it is a fit case to allow the appeal.

7. Now the points that arise for consideration in this appeal are:

1. Whether the complainant has proved the guilt of the accused for the offence punishable under Section 138 of the N.I. Act beyond all reasonable doubt? and

2. Whether the judgment of the trial Court is sustainable?

8. Point Nos.1 and 2 are intertwined with each other; hence, this Court is inclined to address both the points simultaneously in order to avoid recapitulation of facts and evidence.

9. Before adverting to the findings of the trial Court, it is not out of place to refer the following decisions.

(i) **State of Rajasthan vs. Mohan Lal[1],** wherein the Hon'ble Apex Court held at Para No.34 as follows:

> 34. From the above decisions, in Chandrappa and Ors. v. State of Karnataka, (2007) 4 SCC 415, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:
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> (1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
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> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
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> (3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court

[1] AIR 2009 SC 1872

> in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.
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> (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
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> (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

(ii) **State of Maharashtra v Dnyaneshwar Laxman Rao Wankhede[2],** wherein the Hon'ble apex Court held at Para Nos.15, 21 and 22 as follows:

> 15. Before embarking on the rival contentions raised before us, it is our duty to remind ourselves that we are dealing with a judgment of acquittal and, thus, it is absolutely essential to keep in mind the well-settled principles of law that in the event two views are possible to be taken, this Court shall not interfere with a judgment of acquittal. There cannot be any doubt that in the event, having regard to the materials brought on record, the Court comes to the conclusion on the basis thereof that only one view is possible, a judgment of acquittal may be interfered with. (See *Shivappa* v. *State of Karnataka*, (2008) 11 SCC 337, *State of Maharashtra* v. *Rashid B. Mulani*, (2006) 1 SCC 407 and *State* v. *K. Narasimhachary*, (2005) 8 SCC 364.)
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> 21. Even in a case where the burden is on the accused, it is well known, the prosecution must prove the foundational facts. (See *Noor Aga* v. *State of* Punjabi, (2008) 16 SCC 417 and *Jayendra Vishnu Thakur* v. *State of Maharashtra*, (2009) 7 SCC 104.)
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> 22. It is also a well-settled principle of law that where it is possible to have both the views, one in favour of the prosecution and the other in favour of the accused, the latter should prevail. (See *Dilip* v. *State of M.P.,* (2007) 1 SCC 450 and *Gagan Kanojia* v. *State of Punjab*, (2006) 13 SCC 516.)

10. As per the principle enunciated in the cases cited supra, where it is possible to have two views – one in favour of the Prosecution and the other in favour of the accused – the latter view should prevail. Let me consider the facts of the case on hand in the light of the principles enunciated in the cases cited supra.

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[2] (2009) 15 SCC 200

11. As seen from the testimony of PW.1, the accused borrowed hand loan of Rs.1,50,000/- from him in the month of June, 2003. His testimony further reveals that the accused issued Ex.P.1 cheque dated 18.12.2003 in his favour for an amount of Rs.1,50,000/- drawn on Agrasen Co-operative Urban Bank Limited, Siddiamberbazar, Hyderabad. The complainant presented the cheque for collection and the same was returned with an endorsement 'insufficient funds'. Ex.P.2 is the pay slip of Indian Bank dated 19.12.2003. Ex.P.3 is the cheque return memo dated 22.12.2003. Ex.P.4 is the outward clearing advice dated 23.12.2003. The accused admitted his signature on Ex.P.1 cheque. In such circumstances, the Court can draw a presumption that the accused issued the cheque in discharge of the legally enforceable debt as contemplated under Section 139 of the N.I. Act. Once the accused rebutted the presumption drawn under Section 139 of the N.I. Act, the onus of proof shifts on the complainant to prove that the cheque was issued in discharge of legally enforceable debt. Except the oral testimony of PW.1, there is no other convincing evidence to establish that the accused borrowed an amount of Rs.1,50,000/- from the complainant. A perusal of the record clearly reveals that the accused had acquaintance with the complainant. In the cross-examination, PW.1 categorically admitted that he used to sit in the shop of the accused. He denied the suggestion that taking advantage of his acquaintance with the accused, he has taken Ex.P.1 cheque and filed the present complaint.

12. As per the allegations made in the complaint, the cheque was issued by the accused on 18.12.2003. The cheque was

presented on 19.12.2003. The material available on record clinchingly establishes that the complainant presented the cheque without any delay. The complainant got issued original of Ex.P.5 statutory notice dated 31.12.2003 to the accused. Ex.P.6 postal receipt and Ex.P.7 is the acknowledgment card. The accused issued reply notice dated 12.01.2004 denying the allegations made in the statutory notice. The accused has taken a specific stand that he was attacked with paralysis stroke in the month of March, 2003; therefore, he is not in a position to sign the cheque. In the cross-examination, PW.1 admitted that the accused was attacked with paralysis stroke in the year 2003. A perusal of the testimony of DW.1 reveals that the accused sent Ex.D.2 letter dated 06.03.2003 requesting the bank to operate his account by his son as he was suffering with paralysis. The oral testimony of DW.1 coupled with Ex.D2 clearly reveals that in the month of March, 2003 itself the accused was suffering with paralysis. It is a known fact that a person, who is suffering with paralysis, may not be in a position to sign the cheque. A perusal of Ex.P.3 clearly reveals that the bank returned cheque with the following endorsements:

> "1. Amount in words and figures differs.
>
> 2. Insufficient funds."

13. This Court carefully perused Ex.P.1 cheque in order to ascertain whether the endorsement made by the bank is correct or not. A perusal of Ex.P.1 clearly demonstrates that there is a variation in the cheque with regard to the amount in figures and the words. In the words column, one hundred and fifty only is mentioned, whereas the amount is shown as Rs.1,50,000/- in figures. There are corrections in the figure also. There are some

alterations on Ex.P.1 cheque. PW.1 has not assigned reasons much less cogent and valid reasons for difference between the words and the figures. As per the testimony of DW.1, the accused opened the bank account in his individual capacity. A perusal of Ex.D.1 reveals that the cheque was issued on behalf of Sri Lakshmi Agencies. The bank account was opened in the name of Sri Lakshmi Agencies. It is not the case of the complainant that the accused is the owner of Sri Lakshmi Agencies. When the accused was not the proprietor of Sri Lakshmi Agencies, how he issued the cheque on behalf of Sri Lakshmi Agencies is not properly explained by the complainant. Even assuming, but not conceding, that the accused is the proprietor of Sri Lakshmi Agencies, the complainant has to file a complaint against Sri Lakshmi Agencies represented by authorized person and not against the accused in his individual capacity. There is no mention in the complaint that Ex.P.1 cheque was issued on behalf of the Sri Lakshmi Agencies. The complainant issued original of Ex.P.5 statutory notice in the name of M/s. Sri Lakshmi Agencies represented by its Proprietor V.K.Bellaney i.e., accused. The statutory notice was issued in the name of Sri Lakshmi Agencies, whereas the complaint was filed against the accused in his individual capacity. Viewed from this angle also the complaint is not maintainable. Except the self-served testimony of PW.1, there is no other convincing evidence to establish that the accused had taken hand loan of Rs.1,50,000/- from him. The material available on record falls short to establish that the accused issued Ex.P.1 cheque in discharge of legally enforceable debt. The complaint is not maintainable basing on the cheque, which was not issued in discharge of legally enforceable debt. The material placed on record casts a cloud on the version put forth by the complainant. The trial Court considered the oral and documentary evidence in right perspective and arrived at a conclusion that Ex.P.1 cheque is not legally enforceable. I am fully endorsing the observations made by the trial Court. Having regard to the facts and circumstances of the case, I have no hesitation to hold that the complainant failed to prove that Ex.P.1 cheque was issued by the accused in discharge of legally enforceable debt. There is no flaw much less legal flaw in the findings recorded by the trial Court, which warrants interference of this Court. There are no grounds much less valid grounds to interfere with the well considered judgment passed by the trial Court.

14. In the result, the Criminal Appeal is dismissed. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 14.02.2018
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