

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY
CRIMINAL APPEAL No.1504 OF 2007

JUDGMENT:

This appeal is filed under Section 378(4) of Cr.P.C. by the complainant assailing the judgment dated 30.07.2007 in C.C.No.169 of 2005 on the file of the Court of the Judicial Magistrate of First Class at Peddapalli, wherein and whereby the second respondent-accused was found not guilty for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and consequently, acquitted her 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 complainant has been carrying on business in the name and style of Kavitha Canvasing. The accused is the one of the partners of M/s. Surya Traders Rice Mill, Addaguntapalli of Godavarikhani. The complainant supplied paddy worth of Rs.7 lakhs to Surya Traders Rice Mill. In discharge of the debt, the accused issued cheques bearing Nos.607215, 607216 and 607217 for Rs.2 lakhs, 2 lakhs and Rs.3 lakhs respectively on 16.09.2004 in favour of the complainant drawn on State Bank of Hyderabad, F.C.I. Branch, Godavarikhani. The complainant presented the cheques Exs.P.1 to P.3 in his account in Andhra Bank, Peddapalli Branch, for collection. The cheques were returned on 03.03.2005 through cheque return memos Exs.P.6 and P.7 with an endorsement "insufficient funds". The complainant issued statutory notice directing the accused to pay the amount covered

under the cheques. Ex.P.9 is the office copy of legal notice. Exs.P.10 and P.11 are the postal receipts. The accused neither paid the amount nor issued reply notice. Having no other alternative, the complainant filed a complaint under Section 200 of Cr.P.C. on the file of the Judicial Magistrate of First Class at Peddapalli, 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.169 of 2005 and issued summons to the accused. On appearance of the accused, copies of all documents were furnished to her 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.11. 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 her, which she denied. On behalf of the defence, DWs.1 to 3 were examined and Exs.D.1 to D.7 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 her of the said offence. Hence, the present appeal is filed by the complainant.

6. Sri D.Bhaskar Reddy, learned counsel for the appellant-complainant, attacked the judgment of the trial Court on the following grounds:

1. The trial Court has not properly appreciated the oral and documentary evidence available on record and acquitted the accused on assumptions and presumptions.
2. The findings recorded by the trial Court are not based on sound principles of law, and
3. The findings recorded by the trial Court are perverse; 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 advertng 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:

¹ AIR 2009 SC 1872

(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(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.

(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 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.

(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.

(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**

Wankhede², 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.)

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.)

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.)

² (2009) 15 SCC 200

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.

11. As seen from the testimony of PW.1, the accused issued cheques Exs.P.1 to P.3 in his favour. His testimony further reveals that he presented the cheques in his bank for collection. The cheques presented by him were returned with an endorsement 'insufficient funds'. Exs.P.4 and P.5 are counter foils. Exs.P.6 and P.7 are cheque return memos. Ex.P.8 is the letter issued by S.B.H., F.C.I. Branch. In the cross-examination, DW.2 denied her signature on Exs.P.1 to P.3 cheques. Mere denial itself is not sufficient to believe the testimony of DW.2. She also denied her signature on the memo of appearance. This itself indicates that the accused is not speaking truth. DW.1, who is a bank official, deposed that cheque book was issued in the name of the Sai Surya Traders. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that the accused issued the cheques in favour of the complainant. The complainant presented the cheques for collection and the same were dishonoured. Once the cheques issued by the accused were dishonoured, the Court can draw a presumption that the accused issued the cheques in discharge of the legally enforceable debt in view of Section 139 of the N.I. Act. If 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 accused issued Exs.P.1 to P.3 cheques in discharge of legally enforceable debt.

12. The trial Court gave a specific finding that the accused has not issued Exs.P.1 to P.3 cheques in discharge of legally enforceable debt. Let me consider whether the findings recorded by the trial Court are based on evidence much less legally admissible evidence.

13. As per the averments made in the complaint and the testimony of PW.1, he supplied paddy to Surya Traders Rice Mill, Godavarikhani worth of Rs.7 lakhs. In discharge of the said debt, the accused issued Exs.P.1 to P.3 cheques for Rs.2 lakhs, 2 lakhs and Rs.3 lakhs respectively. The complainant did not file even a single scrap of paper to show that he supplied the paddy to Surya Traders Rice Mill. If the averments made in the complaint are taken into consideration, the complainant supplied paddy to Surya Traders Rice Mill. DW.1, is the then Bank Manager of S.B.H., F.C.I. Branch, Godavarikhani. As per the testimony of DW.1, Exs.P.1 to P.3 cheques pertain to account No.065090. Ex.D.1 is the statement of account of Sai Surya Traders from 11.11.2003 to 16.08.2005. Ex.D.2 is statement of account of Sai Surya Traders. Ex.D.3 is the statement showing supply of cheque books to Surya Traders. Ex.D.4 is the specimen signature of the accused. Ex.D.5 is the statement of account opening form. Ex.D.6 is the letter issued by the four partners of the firm including the accused. Ex.D.7 is attested copy of partnership deed. The oral testimony of DW.1 coupled with Exs.D.1 to D.7 clearly reveals that Sai Surya Traders Partnership opened the account in Andhra Bank, F.C.I. Branch, Godavarikhani. As per the testimony of DW.1, the accused (DW.2) was authorized by other partners to operate the bank account on behalf of the Sai Surya Traders. In the cross-

examination of DWs.1 and 2, nothing is elicited to shake their testimony. DW.3 is none other than the husband of DW.2. As per the testimony of DW.3 also Exs.P.1 to P.3 cheques pertain to Sri Sai Surya Traders. The oral testimony of DWs.1 to 3 coupled with Exs.D.1 to D.7 clearly reveals that Sai Surya Traders opened the account bearing No.065090 in Andhra Bank, Godavarikhani, in the name of Sai Surya Traders. Even as per the testimony of PW.1 (complainant), he did not supply paddy to the accused in her individual capacity. The material placed before the Court establishes that the complainant supplied paddy, if any, to Sai Surya Traders only. Exs.P.1 to P.3 cheques were issued by Sri Sai Surya Traders. The record reveals that the accused issued cheques as one of the partners of Sai Surya Traders and not in her individual capacity. After dishonour of the cheques, the complainant got issued statutory notice directing the accused to pay the amount covered under Exs.P.1 to P.3 cheques within the stipulated time. Ex.P.9 is the office copy of statutory notice. The complainant issued the statutory notice to the accused in her individual capacity. The address mentioned in the legal notice is as follows:

“K.Sathemma, C/o. Venkateswara Rice Mill, Addaguntapalli,
Godavarikhani, Ramagundam Mandal.”

14. A perusal of the above address clearly reveals that the complainant issued the statutory notice to the accused in her individual capacity and not as one of the partners of Sai Surya Traders.

15. In order to appreciate the contention of the complainant, it is not out of place to extract hereunder the cause title in C.C.No.169 of 2005:

“K.Sathemma, W/o. Jayaramulu, C/o. Venkateshwara Rice Mill, Addaguntapalli, Godavarikhani, V/o. Ramagundam Mandal.”

A perusal of the cause title is also indicates that the complainant filed the complaint against the accused in her individual capacity and not as one of the partners of Sri Sai Surya Traders. Even as per the case of the complainant, he supplied paddy to Sai Surya Traders. Exs.P1. to P.3 cheques were issued by Sri Sai Surya Traders. In such circumstances, the complainant has to initiate proceedings, if any, under Section 138 of the N.I. Act against Sri Sai Surya Traders only. For one reason or other, no statutory notice was served on Sai Surya Traders before lodging of the complaint. The complainant instead of filing the complaint against Sri Sai Surya Traders, filed the complaint against the accused in her individual capacity. As observed earlier, the complainant failed to prove that he supplied the paddy to the accused in her individual capacity. Viewed from factual or legal aspects, the complaint is not maintainable under law. The complainant failed to prove that Exs.P.1 to P.3 cheques were issued by the accused in discharge of legally enforceable debt. The trial Court considered the oral and documentary evidence available on record in right perspective and arrived at a conclusion that the complaint failed to prove the guilt of the accused for the offence punishable under Section 138 of the N.I. Act. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing the findings recorded by the trial

Court. 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.

16. 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: 15.02.2018
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