THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL APPEAL No.1741 OF 2007

JUDGMENT:

This appeal is filed under Section 378(4) of Cr.P.C. by the complainant assailing the judgment dated 23.11.2007 in C.C.No.49 of 2006 on the file of the Judicial Magistrate of First Class, Special Mobile Court, Srikakulam, wherein and whereby respondent Nos.1 and 2-accused Nos.1 and 2 were found not guilty for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 and consequently, acquitted of the said offences.

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 indebted to the tune of Rs.30.00 lakhs to the complainant. In order to discharge the debt amount, on 25.10.2005 the accused issued Ex.P.1 cheque bearing No.608678 in favour of the complainant for an amount of Rs.3.00 lakhs drawn on State Bank of India, Coira. On 25.11.2005 the accused issued another cheque bearing No.608679 Ex.P.2 in favour of the complainant for an amount of Rs.3.00 lakhs drawn on State Bank of India, Coira. On 16.02.2006 the complainant presented the said cheques for collection in Andhra Bank, Srikakulam and the same were returned with an endorsement 'insufficient funds'. Ex.P.3 is the debit advice of the Andhra Bank, dated 16.02.2006 and Ex.P.4 is the endorsement of State Bank of India, Coira dated 07.02.2006.

The complainant got issued a legal notice dated 26.02.2006 directing the accused to pay the amount covered under Exs.P.1 and P.2 cheques. Ex.P.5 is the office copy of legal notice, Ex.P.6 is the postal receipt and Ex.P.7 is the postal acknowledgement. On 05.03.2006 the accused issued a reply notice original of Ex.P.8. Having no other alternative, the complainant filed a complaint under Section 200 of Cr.P.C. before the learned Judicial Magistrate of First Class, Special Mobile Court, Srikakulam, against the accused for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'). The learned Magistrate, after satisfying himself with the material placed before him, has taken the case on file and numbered it as C.C.No.49 of 2006 and issued summons to the accused. On appearance of the accused, the learned Magistrate examined the accused under Section 251 Cr.P.C. However, the accused denied the allegations and claimed to be tried.

4. Before the trial Court, the complainant himself got examined 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 evidence deposed against him for which he denied the same. 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 accused was found not guilty for the offences punishable under

Sections 138 and 142 of the N.I. Act and consequently, acquitted him. Hence, the present appeal is filed by the complainant.

6. Learned counsel for the appellant-complainant attacked the findings of the trial Court on the following grounds:

1. The trial Court failed to consider that the burden of proof lies on the accused, having admitted his signature on Ex.P.1 to establish that the debt in question is not legally enforceable.
2. The trial Court ought not to have placed reliance on Exs.D.1 and D.2, which have nothing to do with Exs.P.1 and P.2 cheques.
3. The findings recorded by the trial Court are not sustainable either on facts or in law; therefore it is a fit case to allow the appeal.

7. None appeared on behalf of respondent Nos.1 and 2 - accused.

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

1. Whether the complainant has proved the guilt of the accused for the offences punishable under Sections 138 and 142 of the N.I. Act beyond all reasonable doubt? and
2. Whether the judgment of the trial Court is sustainable?

9. 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.

10. 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 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

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[1] AIR 2009 SC 1872
[2] (2009) 15 SCC 200

> 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.)

11. 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.

12. The oral testimony of PW.1 coupled with Exs.P.1 to P.4 reveals that the cheques issued by the accused were returned for want of sufficient funds. The accused is not denying his signature on Exs.P.1 and P.2 cheques. In view of the facts and circumstances of the case, the Court can draw a presumption under Section 139 of the N.I. Act that Exs.P.1 and P.2 cheques were issued by the accused in discharge of legally enforceable debt. The presumption drawn under Section 139 of the N.I. Act is rebuttable. If the accused rebut the presumption, then the onus of proof shifts on the complainant to establish that Exs.P.1 and P.2 cheques were issued in discharge of legally enforceable debt.

13. As seen from the testimony of DW.1, there are some business transactions between him and PW.1. In that transaction he issued totally six cheques each for Rs.3.00 lakhs. As per the

testimony of DW.1, PW.1 and himself agreed to keep those cheques with one Hanumanthu Rajeswararao. In the cross-examination, PW.1 in unequivocal terms admitted that there is some dispute between himself and the accused with regard to the transport business. He categorically admitted that the accused handed over six cheques for a total amount of Rs.18 lakhs to Hanumanthu Rajeswararao. In reply notice original of Ex.P.8 the accused has taken a specific stand that he handed over the said cheques to one Rajeswararao in view of dispute between himself and complainant. The material available on record clearly reveals that as per the direction of Hanumanthu Rajeswararao, the accused handed over the said cheques to Balaram Murthy.

14. Basing on the oral testimony of DW.1 and Exs.D.1 and D.2, the Court can safely presume that the accused handed over those cheques to Rajeswararao in order to resolve the dispute between them. In the cross-examination, PW.1 in unequivocal terms deposed that the said Rajeswararao handed over the said cheques to him. In the cross-examination PW.1 introduced a new version that he had taken seven demand drafts in the name of Jasper Company at Vijayawada for purchase of six trucks in the name of the accused. In discharge of that debt, the said cheques were issued. There is no pleading in the complaint that PW.1 had taken seven demand drafts in the name of Jaspar Company at Vijayawada for purchase of trucks in the name of the accused. If really PW.1 had taken demand drafts in the name of Jasper Company, Vijayawada, what prevented him to produce the certified copies of demand drafts or to examine the concerned bank official? For the reasons best known, PW.1 did not take any steps in that

direction. As observed earlier, there is no pleading in the complaint that he had taken the demand drafts in the name of the Jasper Company. In such factual scenario, it is not safe to attach any credibility to the oral testimony of PW.1. In the cross-examination PW.1 in unequivocal terms deposed that there is no documentary evidence to establish that he has taken seven demand drafts in the name of Jasper Company at Vijayawada. Exs.D.1 and D2 are the minutes of the meeting dated 13.06.2005 and 20.06.2005. The cheques were issued on 25.10.2005 and 25.11.2005. In such circumstances, the possibility of handing over the empty cheques by the accused to Rajeswararao is more probable and believable. Except the oral testimony of PW.1, there is no other cogent and convincing evidence to establish that the accused issued Exs.P.1 and P.2 cheques in discharge of legally enforceable debt. On the other hand, the material available on record clinchingly establishes that the accused handed over the said cheques to Rajeswararao as a security for settlement of dispute between him and the complainant. Taking advantage of the same, the complainant had taken the cheques from Rajeswararao and filed the complaint. The trial Court, after considering the oral and documentary evidence available on record, arrived at a conclusion that Exs.P.1 and P.2 cheques were not issued in favour of the complainant in discharge of legally enforceable debt. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully agreeing with the findings recorded by the trial Court.

15. Having regard to the facts and circumstances of the case, I am of the considered view that the accused has not issued

Exs.P.1 and P.2 cheques in discharge of legally enforceable debt as contemplated under Section 138 of the N.I. Act. 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: 01.02.2018
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