THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL APPEAL No.1909 OF 2005

JUDGMENT:

This appeal is filed under Section 378(4) Cr.P.C. assailing the judgment dated 05.10.2005 passed in C.C.No.667 of 2000 on the file of the Court of XIV Additional Chief Metropolitan Magistrate, Hyderabad, wherein whereby the accused was found not guilty for the offence under Section 138 of Negotiable Instruments Act (for short 'the Act') and consequently acquitted of the said offence.

2. The facts that leading to filing of the present appeal are as follows: The complainant company is incorporated under the Companies Act having registered office at Nagarjuna Hills, Panjagutta, Hyderabad. The complainant company has been carrying on business in fertilizers and other agriculture related products. One T.Srinivas is the special power of attorney holder as per the resolution passed by the Board of Directors of the company in their meeting held on 24.01.2001 to represent the company and to prosecute criminal cases. The accused is the proprietor of M/s. Shri Agro Centre, Akola and became dealer of the company. The company supplied fertilizers and other products to the accused. The accused issued a cheque bearing No.3247759 dated 26.06.2000 for Rs.6,33,569.84ps drawn on Janata Commercial Cooperative Bank Ltd., Akola towards discharge of liability. The

complainant presented the said cheque for collection and the same was returned with an endorsement 'payment stopped by the drawer' on 04.07.2000. The complainant got issued a legal notice dated 20.07.2000 to the accused directing him to pay the said amount within 15 days from the date of receipt of notice. The accused received the notice on 24.07.2000 and issued a reply with false and frivolous contentions. Having no other alternative, the complainant filed a complaint under Section 200 Cr.P.C. on the file of the Court of XIV Additional Chief Metropolitan Magistrate, Hyderabad, against the accused for the offence punishable under Section 138 of NI Act. The learned Magistrate, having satisfied with the material placed before him, has taken the case on file under Sec.138 of Negotiable Instruments Act and numbered the same as C.C.No.667 of 2000 and issued summons to the accused. On appearance of the accused, copies of all documents were supplied to him under Sec.207 Cr.P.C. and the accused was examined under Sec.251 Cr.P.C. for which he denied the commission of offence and claimed to be tried.

3. In order to prove the guilt of the accused, on behalf of the complainant, P.W.1 was examined and Exs.P1 to P12 were marked. After completion of the complainant's side evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating material deposed against him. The accused denied the same. On behalf of the

defence, D.W.1 was examined and Exs.D1 and D2 were marked. 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 NI Act beyond all reasonable doubt and consequently acquitted him for the said offence. Feeling aggrieved by the judgment of the trial Court, the complainant preferred the present appeal.

4. Heard Sri Hari Prasad Reddy, learned counsel representing Sri C.Saran Reddy, learned counsel for the appellant, learned Public Prosecutor, appearing for the second respondent-State and perused the material on record.

5. The learned counsel for the appellant submitted that the trial Court misconstrued and disbelieved Ex.P12 letter dated 13.10.1999. The trial Court ought not to have placed reliance on Ex.B1 carbon copy of acknowledgment without producing the original. The recitals of Exs.P10 and P12 clearly establish that the accused issued Ex.P4 cheque dated 26.06.2000 towards discharge of legally enforceable debt. 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.

6. Before adverting to the findings of the Court below, 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

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

> 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.)

7. 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.

8. The complainant is a company registered under the Companies Act having its registered office at Nagarjuna Hills, Panjagutta, Hyderabad. The complainant has been carrying on business in fertilizers and other agriculture related products. The complainant company used to supply fertilizers to different parts of the country by appointing local dealers. As seen from the testimony of P.W.1 and D.W.1, the accused was appointed as a dealer of the complainant company at Akola, State of Maharashtra. A perusal of Ex.P10

statement of account reveals that the complainant company supplied fertilizers and other agriculture related products to the accused.

9. As seen from the testimony of P.W.1, the accused issued Ex.P4 cheque bearing No.3247759 dated 26.06.2000 for an amount of Rs.6,33,569.84 ps in favour of the complainant company in discharge of legally enforceable debt. His testimony further reveals that the complainant company presented the cheque for collection and the same was returned with an endorsement of 'stop payment'. Ex.P5 is the cheque returned memo dated 04.07.2000. Ex.P6 is the debit advise. The testimony of P.W.1 further reveals that the complainant company got issued a legal notice on 20.07.2000 directing the accused to pay the amount covered under Ex.P4 cheque within 15 days from the date of receipt of the same. Ex.P8 is the postal receipt. Ex.P9 is the postal acknowledgment. The accused got issued a reply notice Ex.P11 dated 01.08.2000 denying the allegations made in the complaint. A perusal of the record reveals that the complainant has meticulously adhered the procedure as contemplated under Section 138 of NI Act before filing of the complaint.

10. In the cross-examination, the accused (D.W.1) admitted his signature on Ex.P4 cheque. The fact remains that Ex.P4 cheque issued by the accused was dishonoured due to stop

payment. The fact remains that the accused has not honoured the cheque issued by him. Once the cheque issued by the accused was not honoured, the Court can draw a presumption under Section 139 of NI Act that the cheque was issued for discharge of legally enforceable debt. Suffice it to say that the presumption under Section 139 of NI Act is a rebuttable one. Once the accused rebut the presumption drawn under Section 139 of NI Act, again the onus of proof shifts on the complainant to establish that the cheque in question was issued for discharge of legally enforceable debt.

11. In the reply notice the accused has taken a specific plea that he issued Ex.P4 cheque towards security. As per the testimony of D.W.1, he issued the cheque towards security. As per the recitals of Ex.D1, the accused issued Ex.P4 cheque in favour of the complainant company as a security.

12. A perusal of the record reveals that the accused handed over the cheque to one T.L.Nayak, who is the sales manager of the complainant company as a security. It is not the case of the complainant that the said T.L.Nayak was not the sales manager of the complainant company. P.W.1 did not deny the signature of said T.L.Nayak on Ex.D1. The material placed before the Court *prima facie* reveals that the accused issued Ex.P4 cheque towards security.

13. The accused rebut the presumption drawn under Section 139 of NI Act by producing Ex.D1. Therefore, the

complainant has to prove that Ex.P4 cheque was issued in discharge of legally enforceable debt.

14. The very purpose of the cross-examination of witness is to elicit the truth. The defence counsel can elicit the information by putting suggestions to the complainant witnesses. Any admission made by the witness is relevant in order to appreciate the rival contentions. Whether Ex.P4 cheque was issued towards discharge of legally enforceable debt or not is a question of fact, which can be decided basing on the evidence available on record. Ex.P10 statement of account is no way helpful to the complainant to establish that Ex.P4 cheque was issued in discharge of debt amount. The other document on which the complainant placed much reliance is Ex.P12, letter dated 13.10.1999 alleged to have been issued by the accused acknowledging the debt amount. As usually D.W.1 denied his signature on Ex.P12. I have carefully perused Ex.P12. In Ex.P12, the amount Rs.3,00,000/- was strike off and written as Rs.4,33,569/-. There are some over writings at the figure Rs.1,00,000/-. P.W.1 in unequivocal terms admitted about over writings on Ex.P12. There is no pleading in the complaint that the accused issued Ex.P12 letter on 13.10.1999 acknowledging the debt amount of Rs.6,33,569/-. There is no whisper in the testimony of P.W.1 that the accused issued Ex.P12 letter acknowledging the debt amount of Rs.6,33,569/-. P.W.1 was

examined on 18.08.2005. After completion of examination of P.W.1, the complainant filed criminal petition to recall P.W.1 for marking of Ex.P12. There is no whisper in the testimony of P.W.1 from where the complainant traced out Ex.P12 letter. If really the accused had issued Ex.P12 letter acknowledging the debt amount, what prevented the complainant to mention the same in the complaint as well as in the chief examination of P.W.1. It is needless to say that mere marking of the document would not amount to proof of contents of the same. The complainant simply marked Ex.P12.

15. As observed earlier, the accused has taken a specific plea in the reply notice itself that he has given Ex.P4 cheque to the complainant company towards security only. In order to appreciate the contention of the learned counsel for the appellant, it is not out of place to extract the relevant portion of the cross-examination of P.W.1.

> "It is not true to suggest that 1999 itself Mr.T.L.Naik, Area Manager collected the cheque in question in blank form and having filled in the contents and it was presented for realization with an dishonest intention for harass the accused. I do not know whether Mr.S.D.Shinde area sales officer gave in writing to return the blank cheques that were obtained from the accused by T.L.Naik. I do not know the reasons that the Mr.Shinde failed to return the cheque the accused instructed the banker to stop payment prior to the date of cheque."

16. Mere denial of suggestion is somewhat different to that of specific denial. A perusal of the cross-examination of P.W.1 clearly reveals that one S.D.Shinde worked as Area Sales Officer at Akola. He simply pleaded his ignorance whether the said Shinde addressed a letter to the complainant company to return Ex.P4 cheque to the accused. He further deposed that he does not know the reasons why the Shinde failed to return the cheque to the accused. If the testimony of P.W.1 is taken into consideration, he did not deny the factum of addressing a letter by the Shinde to the complainant company requesting to return Ex.P4 cheque to the accused. If really the accused had given Ex.P4 cheque for discharge of legally enforceable debt, what prompted Shinde to address a letter to the company. As observed earlier that Ex.P4 cheque was issued towards security only. As rightly pointed out by the learned counsel for the appellant if a cheque is issued as a security in order to discharge the existing debt, then the same can be enforceable under law.

17. In view of discrepancies and the admission made by P.W.1 in his cross-examination, reliance can not be placed on Ex.P12 the alleged acknowledgment of letter issued by the accused. Once the court disbelieves Ex.P12, there is no other material on record to establish that as on 10.06.1999 the accused owe some amount to the complainant company. It is not uncommon in business transactions to handover empty

cheques towards security. The stand taken by the accused that Ex.P4 cheque was issued as per the rules and regulations of the complainant company towards security, without any enforceable debt, is more probable and believable. The trial Court rightly discarded Ex.P12.

18. It is not in dispute that accused handed over the cheque to T.L.Nayak. The said T.L.Nayak is the competent person to say whether Ex.P4 cheque was issued as a security or towards discharge of legally enforceable debt. For the reasons best known the complainant did not examine T.L.Nayak. Likewise, S.D.Shinde addressed a letter to the complainant company for return of Ex.P4 cheque. Both of them are employees of complainant's company. Non examination of those two persons also casts a cloud on the version put forth by the complainant. As observed earlier, P.W.1 clearly admitted that the signature on Ex.P4 is different to that of other contents of the cheque. It is also strengthen the stand of the accused. If the version put forth by the complainant creates a doubt, then the accused is entitled for benefit of doubt.

19. The material placed before the Court falls short to establish that the accused owe an amount of Rs.6,33,569.84ps as on 10.06.1999 to the complainant company. The material placed before the Court bereft to establish that the accused issued Ex.P4 cheque in discharge

of legally enforceable debt. If the complainant fails to establish that the accused issued the cheque towards discharge of the debt, the complaint is liable to be dismissed.

20. There is no flaw much less legal flaw in the findings of the trial Court, which warrants interference of this Court. There are no grounds much less legally admissible grounds to interfere with the findings recorded by the trial Court and the appeal is liable to be dismissed.

21. In the result, the Criminal Appeal is dismissed. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

T. SUNIL CHOWDARY, J.

Date:01.02.2018
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