

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.1099 OF 2011

JUDGMENT:

This Criminal Appeal, under Section 378(4) of the Code of Criminal Procedure, 1973, is filed by the appellant/complainant, challenging the judgment, dated 21.07.2010, passed in Criminal Appeal No.11 of 2010 by the learned Sessions Judge, Guntur, whereby, the conviction and sentence recorded against respondent No.1 herein/accused for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'), by the learned VI Additional Junior Civil Judge, Guntur, *vide* order, dated 22.12.2009, passed in C.C.No.277 of 2008, was set aside.

2. Heard the learned counsel for the appellant/complainant. In spite of the matter being posted under the caption "For Orders", there is no representation for respondent No.1/accused. Perused the record. As the matter pertains to the year 2011, the same can be disposed of basing on the material available on record.

3. Learned counsel for the appellant/complainant would submit that there is deemed service of notice under Section 138(b) of the Act on the accused, as it was sent to his correct address, but the appellate Court did not appreciate the same and for want of service of notice on the accused under Section 138(b) of the Act, set aside the conviction and sentence recorded against him on 22.12.2009 in C.C.No.277 of 2008 on the file of the learned VI Additional Junior Civil Judge, Guntur and ultimately, prayed to set aside the judgment under challenge and restore the judgment passed in the Calendar Case.

4. As per the material on record, respondent No.1/accused left the address furnished in the legal notice pursuant to his transfer from Chinagarlapadu to Munnangivaripalem and started residing at Munnangivaripalem. Having appreciated this aspect, the appellate Court held that there was no service of notice on the accused, as contemplated under Section 138(b) of the Act. There is no infirmity in the findings recorded by the appellate Court. The appeal does not merit consideration and is liable to be dismissed.

5. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 21.07.2010, passed in Criminal Appeal No.11 of 2010 by the learned Sessions Judge, Guntur.

6. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 20.12.2018
AMD



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