

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.363 of 2008

JUDGMENT:

This Criminal Appeal, under Section 378(4) of Cr.P.C., is filed by the appellant/complainant, challenging the judgment, dated 02.08.2007, passed in C.C.No.625 of 2004 by the Special Judicial First Class Magistrate (for Prohibition and Excise offences), Nalgonda, whereby, the 1st respondent/accused was found not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and was acquitted under Section 255(1) of Cr.P.C.

2. Heard the learned counsel for the appellant/complainant, the learned counsel for the 1st respondent/accused and perused the record.

3. The learned counsel for the appellant/complainant would submit that there is valid service of statutory notice on the 1st respondent/accused. All the statutory requirements prescribed under Section 138 of Negotiable Instruments Act, 1881, are complied with. The address of the 1st respondent/accused mentioned in the summons sent in the subject Calendar Case and the address mentioned in the statutory notice are one and the same. The 1st respondent/accused admitted the service of summons in the subject Calendar Case on him. Therefore, a presumption can be draw that the statutory notice was sent to the correct address of the 1st respondent/accused. The trial Court erroneously held that there was no proper service of statutory

notice on the 1st respondent/accused and acquitted the 1st respondent/accused of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and ultimately prayed to allow the appeal by setting aside the judgment under challenge and convict and sentence the 1st respondent/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

4. On the other hand, the learned counsel for the 1st respondent/accused would submit that the 1st respondent/accused never resided in the address mentioned in the statutory notice. To substantiate his case, the 1st respondent/accused deposed as D.W.1 and also got examined two other witnesses as D.W.2 and D.W.3. The trial Court, after analyzing the entire evidence on record, rightly acquitted the 1st respondent/accused of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. There are no merits in the appeal and ultimately prayed to dismiss the appeal by confirming the judgment under challenge.

5. In view of the above rival contentions, the points that arise for determination in this appeal are as follows:

1. Whether there was valid service of statutory notice on the 1st respondent/accused, as contemplated under Section 138(b) of the Negotiable Instruments Act, 1881.
2. Whether the judgment of the trial Court is sustainable or the same is liable to be set aside?

Points:-

6. There is specific evidence of D.W.1 to D.W.3 that the 1st respondent/accused was residing at N.G.Colony, C/o. Jagini

Rajalingam, H.No.6-4-88, Nalgonda, since march, 2004, and not at H.No.6-2-689, Sree Nagar Colony, Hyderabad Road, Nalgonda, to which address the summons in the subject Calendar Case were sent. Merely because there was service of summons in the subject Calendar Case to an address given in the statutory notice would not be held service of notice, as required under Section 138(b) of the Negotiable Instruments Act, 1881. One of the essential requirements to prosecute a person for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, is that the payee or the holder in due course of the cheque, as the case may be, should make a demand for the payment of the cheque amount due, by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. In the instant case, it cannot be held that there was valid service of statutory notice on the 1st respondent/accused. The Court below, having appreciated the entire evidence on record, rightly acquitted the 1st respondent/accused of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, by dismissing the complaint of the appellant/complainant. There is nothing to take a different view. There is no infirmity in the judgment under challenge. The contentions raised on behalf of the appellant/complainant do not merit consideration. The Criminal Appeal is devoid of merit and is liable to be dismissed.

7. In the result, the Criminal Appeal is dismissed, confirming the judgment, dated 02.08.2007, passed in C.C.No.625 of 2004 by

the Special Judicial Magistrate of First Class (for Prohibition and Excise offences), Nalgonda.

Pending Miscellaneous petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

08th February, 2019
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