IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WEDNESDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SMT JUSTICE LALITHA KANNEGANTI

CRIMINAL APPEAL NO: 1319 OF 2018

Criminal Appeal filed Under Section 378 (4) of Code of Criminal Procedure against the Judgment dated.10.01.2018 passed in C.C.No.63 of 2017 on the file of the Court of the VI Special Magistrate, Erramanzil, Hyderabad.

Between:

K. Naveen Kumar, Occ. Private Employee, R/o H.No 8-147, Prasanna Nagar, Chintal, Quthubullapur, Medchal Malkajgiri District.

...Appellant/Complainant

AND

1. State of Telangana, represented by its Public Prosecutor, High Court of Judicature, at Hyderabad, for the State of Telangana and the State of Andhra Pradesh.

...Respondent No.1

2. B. Ramkishan, S/o. B. Upendar, Occ. RTC Driver, C/o, K.Narsimhulu, H.No 8-172/2, Prasoona Nagar, Chintal, Hyderabad-54, Ranga Reddy District.

...Respondent No.2/Accused

Counsel for the Appellant: SRI PAPAIAH PEDDAKULA

Counsel for the Respondent No.1: THE PUBLIC PROSECUTOR (TG)

Counsel for the Respondent No.2: M/s M. RAMESH

The Court made the following: JUDGMENT

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL APPEAL No. 1319 of 2018

JUDGMENT:

This Criminal Appeal under Section 378(4) Cr.P.C. is filed by the complainant aggrieved by the judgment dated 10.01.2018 in C.C.No. 63 of 2017 on the file of the VI Special Magistrate, Erramanzil, Hyderabad.

2. Complainant is appellant and accused is respondent No.2 in this Appeal.

3. The complainant filed the above C.C. against Respondent No.2 for the offence under Section 138 of the Negotiable Instruments Act. It is stated that Respondent No.2 borrowed Rs.25,000/- from the appellant in March 2014, but did not repay the same. On demand, he issued the subject cheque for Rs.25,000/- dated 28.03.2016 in discharge of the said liability. It is stated that when the cheque was presented in Andhra Bank, S.R.Nagar Branch, the same was returned with an endorsement 'funds insufficient' and the account was in 'dormat state'. As the accused, even after receipt of notice dated 26.04.2016, did not repay the amount, the above case was filed.

3. To prove his case, the appellant examined himself as P.W.1 and got marked Exs.P1 to P5 and on behalf of Respondent No.2, he did not adduce any oral evidence, but got marked Ex.D1 – Address on passbook.

4. After completion of evidence, Respondent No.2 was examined under Section 313 Cr.P.C. and he denied the incriminating material and evidence adduced against him.

5. On hearing learned counsel on either side and on considering the material available on record and also the judgments relied on by the appellant, the learned Magistrate found Respondent No.2 not guilty, consequently, acquitted him of the offence under Section 138 of the Act. Aggrieved by the said order of acquittal, the complainant preferred the present Appeal.

5. A counter-affidavit was filed by the accused denying the allegations in the Appeal. It is stated that Respondent No.2 used to stay as tenant in one of the portions of appellant's father during 2008-12 and the cheque for Rs.5000/- given to his father was misused to file this case and that the appellant is not in a position to lend the amount. It is further stated that there are manipulations / interpolations in the cheque and the Court below thoroughly considered the material before it and rendered the judgment which needs no interference by this Court.

6. Heard Sri Papaiah Peddakula, learned counsel for the appellant. Though counter-affidavit was filed by Respondent No.2, no arguments were advanced on his behalf.

7. Learned counsel for the appellant submits that it is settled principle of law that burden is on the accused to rebut the presumption that the said cheque was not issued in discharge of legally-enforceable debt and the Court below ought to have convicted the accused as he failed to rebut the said presumption. It is further stated that mere non-availability of the promissory note does not throw away the liability of the accused. The learned counsel submits that the appellant could establish issuance of cheque by Respondent No.2 in his favour in discharge of the legally-enforceable debt through oral and documentary evidence,

but the Court below erred in holding that the cheque was issued in another transaction and the appellant misused the said cheque and the judgment of the trial Court is only on assumptions and presumptions. He also submits that though issuance of cheque by Respondent No.2 is not in dispute, the Court below held that burden is on the appellant to prove his case which is nothing but contrary to law as such this Appeal deserves to be allowed.

8. At this juncture, it is not out of place to mention that time and again, it has been made clear by the Hon'ble Apex Court that while entertaining an Appeal against acquittal, High Courts should borne-in-mind the well-settled principles of law that where two view are possible, Appellate Court should not interfere with the finding of acquittal recorded by t he Court below unless some illegality is made out.

9. The principles that govern appellate Court while dealing with an Appeal against an order of acquittal are:

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 ***(See Chandrappa v. State of Karnataka (2007) 4 SCC 415)***. *(emphasis supplied)*.

10. In the light of the law laid down by the Hon'ble Apex Court, it is apparent that while exercising powers in Appeal against the order of acquittal, the Appellate Court would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality which is to be characterised as perverse. Further, merely because two views are possible, the Appellate Court cannot take the view which would upset the judgment delivered by the trial Court. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived by the Court below is perverse and opines that the trial Court has committed an error of law by

ignoring the material evidence on record. In such circumstances, a duty is cast upon the Appellate Court to re-appreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether the accused is connected with the commission of crime, he is charged with.

11. In the order under Appeal, the learned Magistrate opined that complainant has not placed any evidence with regard to his capacity to lend the amount and that subject cheque was issued in discharge of debt. It is further observed that 'on a careful scrutiny of Ex.P1, it is clear to a naked eye that the word '2' is added subsequently and the name of complainant, date and words 'twenty' and 'rupees only' are written subsequently which is also supported by the fact that signature of accused and contents of Ex.P1 cheque are in different hand writings and in different inks and that there is no proper explanation from P.W.1 to ignore these aspects. It is further observed that Ex.P2 memo shows two grounds for dishonour of cheque; 1) funds insufficient and 2) account is in 'dormat state'. This memo was issued in 2016 and Ex.D1 account was in running stage and the cheque under Ex.P1 appears to be from old account of P.W.1. If the same is taken into consideration, it would support the version that blank cheque with signature of accused was taken by the father of P.W.1. It appears to be more probable and acceptable. Therefore, the version of complainant that he lent amount in 2014 and that subject cheque was issued in 2016 is far from reasonableness coupled with improbabilities.

12. It is clear from a perusal of the judgment impugned that the trial Court has elaborately dealt with the evidence and

assigned the reasons for acquitting the accused observing that the complainant failed to prove that accused issued the cheque in discharge of a legally-enforceable debt.

13. In view of the above legal position, the issue which falls for consideration is whether the order of acquittal needs interference of this Court or not.

14. Learned counsel for the appellant contends that burden is on the accused to rebut the presumption that the said cheque was not issued for discharging legally-enforceable debt. In this regard, the defence of the accused is that he was a tenant of father of the appellant and a security cheque was given to him in the year 2008 and the said cheque was misused by the appellant. He relied on the address as shown in Ex.D1 and the admission of P.W.1 in his cross-examination. The main contention of Respondent No.2 is that contents of Ex.P1 appears to be altered and that the earlier cheque was given as security for Rs.5,000/- and it was corrected and misused as if he borrowed Rs.25,000/- from P.W.1. In this context, the evidence of P.W.1 – appellant assumes significance. In his cross-examination, he admitted that house bearing No. 8-147 is in the name of his father and that the same address is shown in the passbook of Respondent No.2 under Ex.D1. He also admitted that he joined service in 2011 on a monthly salary of Rs.6,000/- and during the period 2008-2011, he was not doing any job. It is also admitted that in Ex.P1 cheque, it appears the word "five thousands is erased due to fall of water". In view of the admission of P.W.1, it is clear that there are alterations in the cheque. P.W.1 also did not state the date of borrowing of the amount and he did not place any evidence on record to show his

financial capacity. Further, on the date of cheque, accused is not a tenant in the house of P.W.1's father and it raises a doubt as to how without obtaining any receipt or document by way of acknowledgment, he lent the amount. The other circumstance brought to the notice of the Court is the period of subject cheque. As could be seen from the recitals of Ex.P1 cheque, it was from the account in Andhra Bank maintained by Respondent No.2, whereas Ex.D1 was filed to show that Respondent No.2 is maintaining the account in SBH. The endorsement in Ex.P2 return memo would suggest that the account of Respondent No.2 in Andhra Bank is in dormat state which means that account was not in operation. In the light of the above discussion, it can be safely concluded that the Court below has thoroughly dealt with all the issues and came to a just and proper conclusion.

15. This Court finds no illegality or infirmity committed by the trial Court, hence, there is no reason to interfere with the judgment.

16. In the result, the Criminal Appeal is dismissed confirming the judgment dated 10.01.2018 in C.C. No. 63 of 2017 by the learned VI Special Magistrate at Hyderabad.

The bail bonds, if any stands cancelled and sureties, if any given stand discharged.

17. Consequently, miscellaneous Applications, if any shall stand closed.

Sd/-CH.VENKATESHWARULU
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The VI Special Magistrate, Erramanzil, Hyderabad (With Records)
2. Two CCs to the Public Prosecutor, High Court for the State of Telangana, at Hyderabad [OUT]
3. One CC to Sri. Papaiah Peddakula, Advocate [OPUC]
4. One CC to M/s M. Ramesh, Advocate [OPUC]
5. Two CD Copies
6. One Spare Copy

MMK

HIGH COURT

DATED:15/12/2021

JUDGMENT

CRLA.No.1319 of 2018

DISMISSING THE CRIMINAL APPEAL

02/02/2022