

IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD

TUESDAY, THE TWENTY THIRD DAY OF AUGUST  
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL NO: 1523 OF 2009

Petition under Section 378 of Cr.P.C aggrieved by the Judgment dated. 05.08.2008 passed in CC.No. 900 of 2006 on the file of the Court of the II Additional Chief Metropolitan Magistrate at Hyderabad .

Between:

M.A.Saleem, S/o. M.A Rasheed,aged about 42 years,Occ: Business, R/o. H.No. 2-3-474/41/A6, Akashnagar, Amberpet.

...APPELLANT/COMPLAINANT

AND

1. Miss Cherukuri Durga , D/o. Ch. Venkateshwar Rao,aged about 42 years, Occ: Principal Nightingale School of Nursinhg, Hyderabad., R/o. H.No. 127/3rt, Vijayanagar Colony, Hyderabad.
2. State of A.P., rep.by its Public Prosecutor, High Court of A.P., Hyderabad.

...RESPONDENTS/Accused

Counsel for the Appellant :SRI. MIRZA SAFIULLA BAIG

Counsel for the Respondent No.1 : SRI. B.V.V.S. MURTHY

Counsel for the Respondent No.2 : PUBLIC PROSECUTOR

The Court made the following: ORDER

**THE HON'BLE SRI JUSTICE K.SURENDER****CRIMINAL APPEAL No.1523 OF 2009****JUDGMENT:**

The complainant in C.C.No.900 of 2006 on the file of II Additional Chief Metropolitan Magistrate at Hyderabad is the appellant herein, preferred the present appeal under Section 378 of the Code of Criminal Procedure, challenging the judgment dated 05.08.2008 passed in the above C.C wherein the respondent/accused in the said case was acquitted for an offence punishable under Section 138 of the Negotiable Instruments Act (for short, the NI Act).

2. The facts case of the case are that the complainant/appellant was given an amount of Rs.1,50,000/- as a hand loan to the respondent/accused and to discharge the said debt, he has issued the cheque in question Ex.P1. When the said cheque was presented in State Bank of Hyderabad, Gruhakalpa Branch, Hyderabad for clearance, the same was returned unpaid for the reason of insufficient funds vide Ex.P2.

3. After recording the sworn statement, the said case was taken on file and after the appearance of the accused, he was examined under Section 251 Cr.P.C. He denied the offence and pleaded not guilty and claimed to be tried. In support of his case, the complainant was examined as P.W.1 and marked Exs.P-1 to P-9. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C. The incriminating evidence found against the accused was read over and explained but the same was denied by him. On behalf of the defence, the accused herself examined as DW1 and one Sunitha was examined as DW2 and marked Exs.D1 to D6.

4. After considering the oral and documentary evidence available on record, the learned Magistrate found that the amount was discharged, for which reason the respondent/Accused was found not guilty for the said offence on the basis of the evidence of DWs 1 and 2 and relying upon Exs.D5 and D6 which are receipts issued by the appellant/complainant dated 13.04.2004 and 18.01.2006 respectively. Learned Magistrate further found that the evidence of DWs 1 and 2 and in view of Exs.D1 to D6, the accused probalised her case before the Court to establish that there is no liability under Ex.P1. Aggrieved by the same, the present Appeal is preferred.

5. Learned counsel appearing for the appellant/complainant would submit that since the issuance of cheque is admitted, the presumption has to be drawn under Section 138 of NI Act and the Accused has failed to discharge her burden by preponderance of probabilities, for which reason the acquittal has to be reversed.

6. As seen from the evidence on record, the Respondent/Accused has though admitted the issuance of cheque has produced the receipts which are Exs.D5 and D6 bearing signatures of the appellant/complainant.

7. The Hon'ble Supreme Court in case of **Radhakrishna Nagesh v. State of Andhra Pradesh**<sup>1</sup> held that under the Indian criminal jurisprudence, the accused has two fundamental protections available to him in a criminal trial or investigation. Firstly, he is presumed to be innocent till proved guilty and secondly that he is entitled to a fair trial and investigation. Both these facets attain even greater significance where the accused has a judgment of acquittal in his favour. A judgment of acquittal enhances the presumption of innocence of the accused and in some cases, it may even indicate a false implication. But then, this has to be established on record of the Court.

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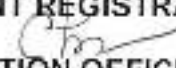
<sup>1</sup> (2013) 11 SCC 688

8. In the light of the above discussion, there are no grounds to interfere with the findings of the trial Court in C.C.No.900 of 2006 and for the aforesaid reasons, this Court is of the view that the appeal is devoid of merits and the same is liable to be dismissed.

9. Accordingly, the Criminal Appeal is dismissed.

As a sequel to it, miscellaneous petitions pending if any in this criminal appeal, shall stand closed.

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SD/-K.SRINIVAS RAO  
JOINT REGISTRAR  
  
SECTION OFFICER

To,

1. The II Additional Chief Metropolitan Magistrate at Hyderabad .
2. Two CCs to Public Prosecutor, High Court for the State of Telangana, at Hyderabad.(OUT)
3. One CC to SRI. MIRZA SAFIULLA BAIG Advocate [OPUC]
4. One CC to SRI. B.V.V.S. MURTHY Advocate [OPUC]
5. Two CD Copies
6. One Spare Copy

CDL.



HIGH COURT

DATED:23/08/2022

JUDGMENT

CRL.A.No.1523 of 2009



DISMISSING THE CRIMINAL APPEAL.

⑧ VLV  
20/10/22