

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.850 of 2010

JUDGMENT:

1. The appellant aggrieved by the acquittal of the respondent/accused for the offence under Section 138 of the Negotiable Instruments Act vide judgment in CC No.79 of 2009 dated 01.08.2009 passed by the XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate, Hyderabad, the present appeal is filed.

2. The case of the complainant is that the accused approached him for hand loan of Rs.3.00 lakhs. The complainant on an undertaking given by the accused, lent the said amount as he promised that he would repay the said amount with 2% interest. The said amount was given as hand loan on two different dates in November 2003. Accused executed two promissory notes and issued two post dated cheques. When requested, the accused asked the cheques to be presented in the month of December 2003. Accordingly, the said cheques were presented and they were returned unpaid for the reason of 'funds insufficient'. The complainant issued a legal notice and the said notice was received

by the wife of the accused. Since the accused failed to pay the amount covered by the cheques, a complaint under Section 138 of the Act was filed.

3. Learned Magistrate, having considered the evidence of the complainant, who examined himself as P.W.1 and marked Exs.P1 to P9 found the accused not guilty for the following reasons;

i) P.W.1 admitted that the accused used to visit Prabhanjan Finance where P.W.1 was working as Accounts Officer and also admitted that the accused was obtaining loans from the said finance company;

ii) During the course of taking loans as per the defence of the accused, pronotes and cheques were given, which were taken by the complainant and misused to file the present complaint;

iii) Admittedly, the writings in every document, Exs.P1 and P2 pronotes and on the cheques Exs.P3 and P4, were in different hand writings made by more than one person in each of the document, which is not explained;

iv) Alleged attestors to pronotes were not examined.

4. Learned counsel for the complainant would submit that when the signatures on the cheques are admitted, learned Magistrate erred in recording acquittal on untenable grounds. Further when the signatures on cheques are admitted, presumption under Section 139 of the Act is attracted and the accused miserably failed to discharge his burden. The finding of the learned Magistrate that the complainant has not taken steps to examine the wife of the accused, who signed Ex.P9 acknowledgment card is totally erroneous and based on such erroneous findings, the accused was acquitted. Accordingly, learned counsel for the complainant prayed for reversal of the judgment of the learned Magistrate and convict the accused.

5. The defence of the accused is that the said cheques and pronotes in blank were given in Prabhanjan Finance, which was situated at S.R.Nagar and admittedly, P.W.1 was working as an Accounts Officer in the said finance company. The said relation was suppressed in the complaint and also in the notice that was issued. The cheques are old cheques which were drawn on Global Trust Bank Limited and the said Bank later merged with Oriental

Bank of Commerce. On the said basis also, the ground taken by the accused that cheques which were given to Prabhanjan Finance being misused, cannot be totally brushed aside.

6. In respect of other circumstances regarding non-examination of the attesters to the pronotes gain significance in the back ground of the defence taken by the accused. In the event of examining the witnesses, who have signed on the pronotes, would lend credibility to the version of P.W.1/complainant. Admittedly, the writings in Ex.P1 pronote Ex.P2 and also the cheques are in different hand writings. The said factors also lend credibility to the defence of the accused. The burden, which shifts on to the accused, can be discharged by preponderance of probability. Collectively when all the circumstances are viewed, the burden that is on the accused is discharged as the defence taken by the accused is probable and based on evidence both oral and documentary.

7. The Hon'ble Supreme Court in the case of **Radhakrishna Nagesh v. State of Andhra Pradesh**¹ held that under the Indian criminal jurisprudence, the accused has two fundamental

¹ (2013) 11 supreme court Cases 688

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.

8. Only for the reason of there being another view, which is possible on the facts, the appellate Court in appeal cannot interfere with the order of acquittal. Unless the reasons given by the trial Court are found to be not based on record or improbable, the appellate Court in appeal against acquittal can show indulgence and reverse the order of acquittal. However, in the present case, when the reasons given by the learned Magistrate are reasonable, this Court while adjudicating the appeal against appeal cannot reverse the said order of acquittal only for the reason of there being another view which is possible to convict the accused.

9. For the said reasons, this Court is of the view that the findings of the learned Magistrate cannot be interfered with to set aside the order of acquittal.

10. Accordingly, the Criminal Appeal is dismissed.

Date: 27.10.2022
kvs

K.SURENDER, J

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