HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.612 OF 2008

JUDGMENT:

1. The appellant/*defacto* complainant filed a complaint in the trial Court against the respondent/accused for the offence under Section 138 of the Negotiable Instruments Act.

2. The learned X Metropolitan Magistrate, Cyberabad at Malkajgiri, after completion of trial, having examined the appellant as P.W.1 and marking Exs.P1 to P10 and Ex.D1 acquitted the 1st respondent/accused vide judgment in CC No.1826 of 2005 dated 11.09.2007.

3. The case of the complainant is that the accused was running a private chit business and the appellant is one of the subscribers. The complainant was paying the chit amount regularly and was acknowledged by the accused from time to time. The accused stopped paying the chit amount and fell due an amount of Rs.68,500/- to the appellant. On demand, the accused issued three post dated cheques Exs.P1 to P3 towards payment due. The said cheques were presented for clearance.

They were returned unpaid for the reason of 'insufficient funds' vide Exs.P4 to P6.

4. The complainant issued legal notice dated 14.11.2003 and the same was received by the accused on 05.12.2003. Since the payment was not made by the accused, a complaint was filed under Section 200 of Cr.P.C by the complainant for the offence under Section 138 of the Negotiable Instruments Act.

5. The ground on which the trial Court acquitted the accused is on the basis of receipt dated 06.12.2003, which was marked as Ex.D1 during the cross examination of PW1 and the complainant/P.W.1 admitted the execution of Ex.D1. Ex.D1 is the receipt dated 06.12.2003, which was executed by the complainant in favour of the accused, in which it is mentioned that Rs.68,500/- was received. It is further stated in Telugu that the cheque Nos. 890577, 890578, 890581 will be returned.

6. Learned counsel for the complainant submits that Ex.D1 is the printed format of the receipt in which there is a mention

regarding three cheques. However, the appellant/complainant signed the same without having the knowledge about the contents that were written in Ex.D1.

7. As stated above, it is clearly mentioned in Ex.D1 that the amount of Rs.68,500/- was received by the appellant and further mentioned in Telugu that the cheques which are Exs.P1 to P3 would be returned. Ex.D1 is dated 06.01.2003 and the cheques in question are dated 30.05.2003, 02.06.2003 and 25.09.2003. Ex.D1 was executed nearly after seven months of the initial handing over of cheques. Further Ex.D1 was executed after issuance of legal notice dated 14.11.2003.

8. The learned counsel for the appellant further submits that the learned Magistrate erred in reading into the contents of Ex.D1 when the attestors were not examined.

9. The undertaking by the Appellant/complainant to return the cheques is the writing in Ex.D1. When a grant (agreement to give) is reduced into writing, as per Section 91 of the Evidence Act no further proof or oral evidence is required.

Once the document is admitted, the contents of the documents can be read into.

In the said circumstances, learned Magistrate has rightly relied upon Ex.D1 to acquit the respondent/accused and the finding of the learned Magistrate cannot be interfered with.

Accordingly, the Criminal Appeal is dismissed. As a sequel thereto, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 21.07.2022
kvs

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