

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WEDNESDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL NO: 858 OF 2010

Criminal Appeal Under Section 378(4) of Cr.P.C. against the Judgment dated 04/03/2010 in CC No.1322 of 2005 On the file of the Court of the II Metropolitan Magistrate, Cyberabad, L.B.Nagar at Hyderabad.

Between:

1. N. Sham Mohan, S/o late Sri Kumaraswamy.

...PETITIONER/APPELLANT/COMPLAINANT

AND

1. B. Vasudeva Reddy, S/o Ram Reddy
2. The State of Andhra Pradesh, rep. by its Public Prosecutor, High Court of Telangana, at Hyderabad.

...RESPONDENTS/RESPONDENTS

Counsel for the Appellant : Sri D. V. N. ACHARYA, Advocate

Counsel for the Respondent No.1 : None Appeared

Counsel for the Respondent No.2 : PUBLIC PROSECUTOR

The Court delivered the following JUDGMENT.

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.858 OF 2010****J U D G M E N T:**

The present Criminal Appeal is filed under Section 378(4) of Code of Criminal Procedure, 1973 (for short "Cr.P.C") by the appellant/complainant aggrieved by the acquittal Judgment passed in C.C.No.1322 of 2005 on 04.03.2010 by the learned II Metropolitan Magistrate, Cyberabad, L.B.Nagar for the offence punishable under Section 138 of Negotiable Instruments Act.

2. Briefly the facts of the case are that an amount of Rs.52,000/- was obtained as loan by the Accused and to discharge the said liability the Accused issued Exs.P1 and P2 for Rs.30,000/- and Rs.22,000/- respectively. When the said cheques were presented for clearance, they were returned with an endorsement "Account closed". On 30.06.2005 the complainant got issued a legal notice to the accused and he got issued a reply with all false and baseless allegations and failed to pay the cheques amount. Hence, the complaint is filed against the accused for the offence under Section 138 of NI Act.

3. In support of the case of the complainant, PWs 1 to 3 were examined and marked Exs.P1 to P12. In support of the case of the accused, Exs.D1 and D2 are marked. The learned Magistrate after concluding the examination of the witnesses found the accused not guilty of the offence.

4. During the course of the trial, the appellant/complainant admitted that he has received Rs.40,000/- towards the outstanding amount and when the Accused offered the remaining amount of Rs.12,000/- by way of Demand Draft on 12.09.2009, the appellant refused to take said Demand Draft. For the said reason, the learned Magistrate found that the case is filed only to harass the accused, hence, the learned Magistrate acquitted the accused without adhering to the other facts of the case.

5. Heard learned counsel for the appellant and perused the record.

6. The learned counsel appearing for the appellant would submit that any settlement in between the parties outside the Court, will not have a bearing on the prosecution under Section 138 of NI Act. When there was an admitted outstanding, the Magistrate

Court ought to have convicted the accused for the aforesaid offence under Section 138 of NI Act.

7. Learned counsel for the appellant relied upon a judgment of Calcutta High Court in case of *M/s.Ancon engineering Co. (P) Ltd. And another v. sri Amitava Goswami*¹ wherein the Court held that part payment of the amount would have a bearing on the prosecution under the offence under 138 of NI Act.

8. In the present case, it is admitted that the amount of Rs.40,000/- was paid against the outstanding of Rs.52,000/-. Though the Demand Draft of Rs.12,000/- was offered, the appellant failed to accept the said amount. The intention of the legislature in adding the provisions under Sections 138 to 147 of NI Act is to enforce payments. The cases are quasi criminal in nature and any settlement between the parties shall be accepted by the Courts.

9. The Hon'ble Supreme Court in several cases held that if the amount covered by the cheque is offered on the first date when there is an appearance before the Court, the Magistrate Court shall dismiss the complaint.

¹ 1994 CR.LJ.351

10. The object of introducing penal provision under Section 138 of NI Act as stated above is only to enforce payments. The complainant having come to the Court, cannot insist that the accused shall be convicted having excepted major portion of the outstanding amounts.

11. In the present case, no reasons are given by the appellant as to why the remaining amount of Rs.12,000/- was refused having accepted the major amount of Rs.40,000/-.

12. In the present facts and circumstances, the judgment of the acquittal passed by the learned II Metropolitan Magistrate, Cyberabad, L.B.Nagar in C.C.No.1322 of 2005 on 04.03.2010 is hereby reversed. However, in view of the acceptance of the outstanding amount by the appellant, in the interest of justice, the accused is directed to pay a fine amount of Rs.12,000/- within a period of one week from the date of receipt of a copy of this Judgment, failing which the fine amount shall be recovered in accordance with Cr.P.C. for recovery of fines.

13. Accordingly, the Criminal Appeal is disposed off.

As a sequel thereto, miscellaneous applications, if any, shall stand closed.

//TRUE COPY//

Sd/- B.S. CHIRANJEEVI
JOINT REGISTRAR
SECTION OFFICER

To,

1. The II Metropolitan Magistrate, Cyberabad, L.B.Nagar at Hyderabad.(With records)
2. Two CCs to the Public Prosecutor, High Court at Hyderabad. (OUT)
3. One CC to Sri D. V. N. ACHARYA, Advocate [OPUC]
4. Two CD Copies.

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HIGH COURT

KS,J

DATED:02/11/2022

JUDGMENT

CRLA.No.858 of 2010



DISPOSING OFF THE CRL.APPEAL.

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