

HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No. 719 of 2008

JUDGMENT:

1. The appellant filed complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the NI Act') against the respondent which was numbered as C.C.No.571 of 2002 on the file of IX Additional Chief Metropolitan Magistrate, Hyderabad.
2. The learned Magistrate, after examining the appellant as P.W.1 and marking Exs.P1 to P10 on behalf of the complainant and Ex.D1 reply notice, found that the respondent/accused was guilty of the offence under Section 138 of the NI Act and sentenced to RI for one year and to pay fine of Rs.3,000/-.
3. Aggrieved by the said conviction, the respondent herein filed Criminal Appeal No.222 of 2007 before the III Additional Metropolitan Sessions Judge.
4. The appellant herein filed Criminal Revision Petition No.92 of 2007 questioning the inadequate sentence passed by the learned Magistrate.

5. The learned Sessions Judge disposed off both the Criminal Appeal No.222 of 2007 filed by the respondent herein and Crl.R.P.No.92 of 2007 filed by the appellant herein by way of Common Judgment dated 22.02.2008 setting aside the conviction imposed on the respondent/accused. As a consequence, the revision petition filed by the complainant was dismissed. Aggrieved by the acquittal recorded by the learned Sessions Judge, the present appeal is filed.

6. The case of the complainant is that the respondent approached him with proposal to develop the property of the complainant at Narayanaguda, along with one Mr.Shantilal Gandhi. The complainant paid an amount of Rs.4,00,000/- for development of the said property. The development was not undertaken and for the reason of misusing of Rs.4,00,000/- given, a complaint was filed to the police. The respondent agreed to repay the amount and issued two cheques under Exs.P3 and P4. Prior to that, the respondent/accused also executed two promotes under Exs.P1 and P2. The said cheques when sent for clearance were returned for the reason of payment stopped by the

drawer under cheque return memo under Ex.P6. The legal notice Ex.P8 was issued, for which reply under Ex.P9 notice was sent by the respondent. The learned Magistrate having found that the respondent was liable to pay the said amount, convicted the respondent as stated supra.

7. The defence of the respondent was that the amounts were given to Mr.Shantilal Gandhi, who received the amount from P.W.1 and not the respondent/accused.

8. The learned Sessions Judge acquitted the respondent on the following grounds; i) P.W.1 complainant admitted that the amount of Rs.4,00,000/- was paid to Mr.Shantilal Gandhi through the respondent and execution of Exs.P1 to P4 was by way of security given by the accused; ii) P.W.1 also admitted that the respondent stood as surety for the amount paid to the said Mr.Shantilal Gandhi; iii) It is not mentioned either in the complaint or the examination in chief that Exs.P3 and P4 cheques were issued by the respondent for the discharge of any enforceable debt or liability; iv) P.W.1 admitted that he received Ex.P5 notice wherein the respondent contended that P.W.4 has forcibly

taken Exs.P1 to P4. Ex.D1 is the office copy of notice dated 07.05.2002 issued by the respondent was addressed by the complainant; v) Ex.P8 notice issued by P.W.1 is invalid for the reason of demanding payment within seven days from the date of receipt of notice and also demanding amount towards interest and legal expenses.

9. The learned counsel for the appellant would submit that the surety can also be prosecuted if the principal failed to pay the money and the order of the learned Sessions Judge has to be reversed.

10. As seen from the evidence on record, the amount of Rs.4,00,000/- was directly paid by P.W.1 to Shantilal Gandhi for which reason, it cannot be said that the respondent is liable only for the reason of vouching for the said Shantilal Gandhi. The conclusions arrived at by the learned Sessions Judge are cogent and convincing for which reason, there cannot be any interference with the well reasoned judgment of the learned Sessions Judge in acquitting the respondent/accused.

11. 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 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.

12. Accordingly, the Criminal Appeal is dismissed.

K.SURENDER, J

Date: 26.07.2022

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¹ (2013) 11 supreme court Cases 688

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