

HON'BLE SRI JUSTICE K.SURENDER

Criminal Appeal No.1589 of 2009

1. The appeal is filed by the complainant/appellant questioning the acquittal of the respondent/accused for the offence under Section 138 of the Negotiable Instruments Act vide judgment in CC No.601 of 2003 dated 28.04.2009 passed by the Judicial Magistrate of First Class, Parkal.

2. For the sake of convenience, the parties hereinafter will be referred to as arrayed in the Calendar Case. The case of the complainant is that out of acquaintance with the accused, an amount of Rs.15,000/- was given as a hand loan on 22.06.2001, which the accused promised to repay with interest. However, on persistent demand, the accused issued a cheque for Rs.15,000/- on 28.04.2003 vide cheque No.502084. The said cheque when presented for clearance was returned with an endorsement 'funds insufficient'. Though notice was given, the accused failed to pay the said amount covered by the cheque, for which reason, complaint was filed.

3. Learned Magistrate after recording the evidence, acquitted the accused for the reason of Ex.P4 legal notice not mentioning the correct cheque number. The cheque number is 185273, however, the cheque number in Ex.P4 was mentioned as 502084. Further, the learned Magistrate found that it is the bounden duty of the complainant to mention exact cheque number in the legal notice. In the chief affidavit of P.W.1, also the cheque number was wrongly mentioned. No steps were taken to rectify the cheque number.

4. Learned counsel for the appellant submits that when the details regarding the amounts are correct and the issuance of cheque is not disputed, wrong mentioning of cheque number is of no consequence. He further submits that once the issuance of cheque is accepted, presumption has to be drawn against the accused, which the accused failed to explain even by preponderance of probability, for which reason, the acquittal has to be reversed.

5. Section 138 of the Negotiable Instruments reads as follows:

“138 Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for¹⁹ [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque,²⁰ [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.]

6. As seen from the chief affidavit and also legal notice, cheque number was wrongly written. D.W.1, who was the then Branch Manager, State Bank of Hyderabad mentioned that the cheque number is 185273 and the said cheque number is not mentioned in the legal notice Ex.P4 nor rectified during the course of trial by stating in the chief examination of P.W.1.

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 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. When the description of the cheque was not correctly intimated to the accused, requirements under Section 138 of Negotiable Instruments Act, 1881 is not met. For the said reasons, the acquittal recorded by the learned Magistrate cannot be interfered with.

¹ (2013) 11 supreme court Cases 688

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

Date: 26.08.2022
kvs

K.SURENDER, J

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