**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY THE SECOND DAY OF MAY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL APPEAL NO: 295 OF 2018

Criminal Appeal Under Section 378(4) of Cr.P.C against the Judgment Dated 21.07.2017 in C.C.No.154 of 2016 on the file of the Court of the V Special Magistrate at Hasithanapuram, R.R. District.

Between:

G. Alwal Reddy, S/o. Late Malla Reddy, Occ: Business, R/o. Plot No. 52, Padmavathi Nagar Colony, HAsthinapuram. Hyderabad,R.R District

...APPELLANT/COMPLAINANT

AND

1. The State of Telangana, Rep. by its Public Prosecutor, High Court at Hyderabad for the State of Telangana and for the state of Andhra Pradesh.

...RESPODENT/RESPONDENT

2. K.Vijaya lakshmi, W/o. K. Madavan Kutty, Occ: Business, R/o. Plot No. 14 and 15 Road No. 23, Dwarakamani nagar, Vanasthalipuram, Hyderabad

...RESPONDENT/ACCUSED

Counsel for the Appellant : Mrs. Swathi Menon representing Sri G. Kalyan Chakravarthy

Counsel for the Respondents : Sri Khaja Vizarath Ali Assistant Public Prosecutor

The Court delivered the following: Judgment

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL APPEAL No.295 of 2018

JUDGMENT:

This criminal appeal arises out of the judgment dated 21.07.2017 passed in C.C.No.154 of 2016 on the file of the Court of the V Special Magistrate, at L.B.Nagar, Hasthinapuram, Ranga Reddy District, wherein and whereby the learned Magistrate acquitted the second respondent herein for the offence punishable under Section 138 of Negotiable Instruments Act, 1881.

2. Heard Mrs.Swathi Menon, learned counsel representing Sri G.Kalyan Chakravarthy, learned counsel for the petitioner and Sri Khaja Vizarath Ali, learned Assistant Public Prosecutor, on behalf of learned Public Prosecutor representing the State/1st respondent. None appeared for the 2nd respondent.

3. The brief facts of the case that led to the filing of all these criminal appeals, succinctly, are as follows:

The appellant and the second respondent are acquainted with each other for a long time and in view of the said acquaintance, the second respondent borrowed an amount of Rs.8.00 lakhs from the appellant for her house construction, as a hand loan. The second respondent executed a promissory note on 27.10.2014. However, in spite of repeated demands made by the appellant, the second respondent did not pay back the amount lent by the appellant, instead, issued a post dated cheque bearing No.029341 dated 19.02.2014, drawn on Union Bank of India, Ramanthapur Branch, Hyderabad towards discharge of the debt. The appellant presented the said cheque in his bank i.e. State Bank of Hyderabad, Alkapuri Branch, Hyderabad for encashment on 19.02.2014, but the same was dishonoured vide cheque return memo dated 20.02.2014 with the reason "funds insufficient". The appellant got issued a legal notice on 05.03.2014 to the second respondent demanding her to pay the amount covered under the dishonoured cheque and the said notice was returned on the ground of "want of house number" as the house number written on the notice was not in existence at that time since it was a newly constructed house. However, the second respondent, in spite of having knowledge of the facts, neither repaid the amount nor issued any reply. Hence the appellant filed a complaint before the trial Court against the second respondent for the offence punishable under Section 138 of N.I. Act, which was numbered as C.C.No.154 of 2016.

4. During the course of inquiry, on behalf of the complainant /appellant he got himself examined as P.W.1 and he also got examined one another witness by name M.Sukha Jeevan Reddy as P.W.2 and Exs.P.1 to P.9 were marked on behalf of the complainant/appellant. On behalf of the second respondent/accused, she got herself examined as D.W.1 and one another witness by name Srinivas Goud i.e. the husband of accused in CC No.152 of 2016 as D.W.2 and Exs.D.1 to D.11 were marked on her behalf.

5. The trial Court, after examining the oral and documentary evidence available on record, found that the appellant/complainant failed to prove his case beyond reasonable doubt against the second respondent for the offence under Section 138 of N.I. Act and accordingly acquitted the second respondent. Hence the present criminal appeal, filed by the appellant / complainant.

6. The learned counsel for the appellant/complainant, submitted that the trial Court came to an erroneous conclusion that the appellant has to prove his case and also failed to consider that the legal presumption is in favour of the holder of the cheque in the eye of law. It is his further

contention that the burden always lies on the accused to rebut the presumption by sufficient proof of evidence. He further submitted that the Court has to take into consideration whether the ingredients of Section 138 (a) (b) and (c) are complied with or not by the complainant. Once it is complied with by the complainant, then the burden shifts on to the accused to prove that there is no legally enforceable debt between the complainant and the accused. In support of his contentions, the learned counsel for the appellant relied on the judgment of the Karnataka High Court dated 09.11.2023 in Crl.A.No.2000 of 2022.

7. On the other hand, learned Assistant Public Prosecutor submitted that the trial Court, having appreciated the entire evidence on record in right perspective, had come to a just conclusion that the appellant failed to discharge the onus that heavily lies on him beyond reasonable doubt and that the second respondent had rebutted the presumption and accordingly acquitted the second respondent, which judgment, in the eye of law does not require any further scrutiny and hence prayed to dismiss this criminal appeal.

8. The factum of acquaintance between the appellant and the second respondent, the signatures of the second respondent on Ex.P.2

promissory note and on Ex.P.1 cheque are not in dispute. But the complainant failed to plead and prove specifically when he lent the amount of Rs.8.00 lakhs to the second respondent, but stated that the second respondent executed promissory note on 27.10.2014. The evidence of P.W.2 also goes to show that the second respondent executed the promissory note in favour of the appellant on 27.10.2014 but he did not say that the appellant lent the amount to the second respondent on the even day or on a specific day. Mere admission of signatures on the cheque and promissory note by the second respondent cannot be taken into consideration to state that the complainant proved his case inasmuch he failed to specifically say the date on which he lent the amount to the second respondent. On the other hand, it is the specific case of the second respondent that when they were asking the appellant for the chit amounts, the appellant misused the cheque and promissory note which were taken by the appellant as security for the lifted amount in the earlier chit transaction.

9. As seen from the record, the appellant failed to prove through legally admissible evidence that he has financial capacity to lend such huge amounts to the second respondent. So in order to draw presumption under

Section 118 r/w 139 of N.I. Act, the burden was heavily on the complainant to show that he had required funds to advance the amounts to the accused and that the issuance of the cheque is in support of the said payment.

10. Moreover, as seen from Ex.P.2 promissory note, the receipt attached to it does not contain the handwriting or signature of the second respondent though all the other columns therein were filled. Hence a presumption can be drawn that the second respondent issued blank promissory note can be accepted that the promissory note is not supported by consideration. Further, the 2nd respondent, by adducing evidence in the form of DWs.1 and 2 and Exs.D1 to D11 successfully established her defence that the subject cheque and promissory note were not issued towards discharge of a legally enforceable debt and they were issued in relation to a chit transaction.

11. Therefore, the material available on record probablizes the defence of the second respondent that she joined as a subscriber in the private chit run by the appellant and after lifting the chit the appellant obtained signed blank cheque and signed promissory note from the second respondent towards security and that there is no consideration under

Ex.P.2 note and that issuance of Ex.P.1 is not towards discharge of legally enforceable debt. The finding of the learned trial Court is based on sound reasoning, which, in my considered view, does not call for interference. The facts of the case in the judgment of the Karnataka High Court, relied upon by the appellant, have no application to the facts of the present case.

12. Hence the criminal appeal is dismissed confirming the judgment dated 21.07.2017 passed in C.C.No.154 of 2016 on the file of the Court of the V Special Magistrate, at L.B.Nagar, Hasthinapuram, Ranga Reddy District.

13. Miscellaneous petitions if any pending in this criminal appeal shall also stand dismissed.

SD/- B.S. CHIRANJEEVI,
JOINT REGISTRAR.

//TRUE COPY//

SECTION OFFICER

To,

1. The V Special Magistrate at L.B.Nagar, Hasithanapuram, Ranga Reddy District (With records, if any)
2. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
3. One CC to Sri G. Kalyan Chakravarthy, Advocate [OPUC]
4. Two CD Copies

DL

HIGH COURT

DATED:02/05/2024

JUDGMENT

CRLA.No.295 of 2018

HIGH COURT FOR THE STATE OF TELANGANA
26 JUN 2024
* DESPATCHED *

DISMISSING THE CRIMINAL APPEAL

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13/06/24