

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THURSDAY, THE EIGHTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HON'BLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL APPEAL No: 160 of 2018

Appeal under Section 378(4)(i) of Cr.P.C aggrieved by the Judgment dated 09-11-2016 passed in C.C.No.126 of 2011 on the file of the Court of the I Additional Judicial Magistrate of I Class, Khammam.

Between:

Mandapalli Pradeep Kumar, S/o Adinarayana, Age:42 years, Occ: Business, R/o. H.No.7-1-60/A, Opp. Venkateswara Theatre, Khammam

...Appellant/Complainant

AND

1. B.Bixam, S/o Dasu, Age: Major, Occ: Attender in PDO Office, R/o. H.No.8-3-25/1, Nizampet, Gollabazar, Khammam Town and District.

...Respondent No.1/Accused

2. The State of Telangana, Rep. by its Public Prosecutor, High Court at Hyderabad.

...Respondent No.2

Counsel for the Appellant: Sri M. Ramalingeswara Reddy

Counsel for the Respondent No.1: Sri K. Chaithanya, Amicus Curiae

Counsel for the Respondent No.2: Ms. S. Madhavi,
Assistant Public Prosecutor

The Court delivered the following: JUDGMENT

THE HONOURABLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL APPEAL No.160 OF 2018

JUDGMENT:

This Criminal Appeal is preferred by the appellant/complainant against the judgment dated 09.11.2016 in C.C.No.126 of 2011 passed by the I Additional Judicial First Class Magistrate, Khammam (for short, "the trial Court") whereby and whereunder the learned Magistrate acquitted respondent No.1/accused for the offence punishable under Section 138 of the Negotiable Instruments Act (for short, "the NI Act").

2. Heard Sri M. Ramalingeswara Reddy, learned counsel for the appellant/complainant, K. Chaitanya, learned *Amicus Curiae* appearing on behalf of respondent No.1/accused and Ms. S. Madhavi, learned Assistant Public Prosecutor appearing for respondent No.1-State. Perused the material available on record.

3. The brief facts of the case are that the appellant/complainant and respondent No.1/accused were acquainted with each other and in that process, the accused

approached the appellant to borrow an amount of Rs.1,25,000/- on 26.10.2009 for his family necessities, with a promise to repay the same within ten days. Then, the appellant gave sum of Rs.1,25,000/- to the accused, for which the accused executed promissory note infavour of the complainant agreeing to repay the same with interest @ Rs.2/- per hundred per month. Thereafter, when the complainant demanded the accused to repay the same, the accused issued cheque dated 26.10.2010 for a sum of Rs.1,25,000/- bearing No.548720, dated 26.10.2010 of Karur Vysya Bank Limited, Khammam branch. Thereafter, when the complainant presented the said cheque into his bank for collection, the same was returned with an endorsement "Funds insufficient" and when the complainant informed the same to the accused. Though, the accused promised to repay the said amount, he failed to repay the same. Then the complainant got issued a legal notice dated 11.11.2010 to the accused and though the accused received the same, he failed to repay the cheque amount. Therefore, the accused/respondent No.1 alleged to have committed the offence punishable under Section 138 of the

Negotiable Instruments Act (for short, "the NI Act"). Hence, the complaint.

4. After appreciation of oral and documentary evidence available on record, the trial Court *vide* impugned judgment dated 09.11.2016 in C.C.No.126 of 2011 found respondent No.1/accused not guilty for the offence punishable under Section 138 of the N.I. Act accordingly and acquitted him of the said offence.

5. Aggrieved by the above-said judgment, the appellant filed Crl.A.No.15 of 2017 before the Principal Sessions Judge at Khammam. However, the said appeal was returned by docket order dated 22.12.2017, holding that as per the recent case law in Crl.P.No.16742 of 2017, dated 27.10.2017, as to the appeal filed against the judgment of acquittal, no appeal is maintainable before the Sessions Judge at the instance of a private complaint under Section 374 proviso of Cr.P.C and it has to be filed before the High Court under Section 378 of Cr.P.C. Therefore, the appellant/complainant has filed the present Criminal Appeal before this Court.

6. Learned counsel for the appellant/complainant contended that the trial Court failed to appreciate the evidence available on record in proper perspective and passed the impugned judgment by acquitting the accused and hence, seeks to set aside the impugned judgment.

7. On the other hand, learned counsel for respondent No.2 and learned Assistant Public Prosecutor contended that the trial Court upon careful scrutiny of the material available on record, acquitted the accused and the interference of this Court is unwarranted. Therefore, learned counsel seeks to dismiss the Criminal Appeal.

8. On behalf of the complainant, the trial Court examined PW.1 and marked Exs.P1 to P7. On behalf of the defence, none were examined and no documents were marked.

9. Upon careful scrutiny of oral and documentary evidence, the trial Court observed that according to the PW.1, the alleged transaction took place at his house and one Mr.Nageswara Rao scribed the promissory note under Ex.P6, but the complainant failed to examine the said Mr.Nageshwar Rao

scribe of Ex.P6 promissory note, for the reasons better known to him. The appellant also failed to examine the person who signed as witness on Ex.P6 promissory note in order to prove that there was legally enforceable debt rests upon the accused.

10. It is well settled law that in an appeal against acquittal, the appellate Court is circumscribed by the limitation that no interference has to be made with the order unless the approach made by the trial Court to the consideration of evidence is vitiated by some manifest illegality or the conclusion recorded by it is such, which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, to be characterized as perverse. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread, which runs through the web of administration of justice in criminal cases, is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and

the other to his innocence, the view which is favourable to the accused should be adopted.

11. In ***Mrinal Das Vs. State of Tripura***¹, the Apex Court held as under:

“It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which

¹ (2011) 9 SCC 479

the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."

12. In *Maloth Somaraju Vs. State of Andhra Pradesh*²

the Apex Court held that there can be no two opinions that merely because the acquittal is found to be wrong and another view can be taken, the judgment of acquittal cannot be upset. The appellate Court has more and serious responsibility while dealing with the judgment of acquittal and unless the acquittal is

² (2011) 8 SCC 635

found to be perverse or not at all supportable and where the appellate Court comes to the conclusion that conviction is a must, the judgment of acquittal cannot be upset. The appellate Court has to examine as to whether the trial Court, while upsetting the acquittal, has taken such care.

13. In view of the Judgments referred to above and for the aforesaid reasons, I am of the view that there are no merits in the appeal and the same is liable to be dismissed.

14. Accordingly, the appeal is dismissed, confirming the judgment dated 09.11.2016 in C.C.No.126 of 2011 passed by the I Additional Judicial First Class Magistrate.

As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.

Sd/- T. SRINIVAS
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The I Additional Judicial Magistrate of I Class, Khammam. (with records, if any)
2. The Principal Sessions Judge, at Khammam.
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. [OUT]
4. One CC Sri M. Ramalingeswara Reddy, Advocate [OPUC]
5. One CC to Sri K. Chaitanya, Advocate [OPUC]
6. Two CD Copies

kam/DL

HIGH COURT

DATED:08/08/2024

ORDER

CRLA.No.160 of 2018



DISMISSING OF THE
CRIMINAL APPEAL

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H K R

24/3/2025