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

**WEDNESDAY, THE TWENTY SIXTH DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL APPEAL NO: 279 OF 2018

Criminal Appeal Under Section 378(4) of Cr.P.C against the Judgment Dated 09.07.2015 in CC No. 239 of 2014 on the file of the Court of the IV Special Magistrate, Hasthinapuram, RR District.

Between:

Annam Ashok Kumar, S/o. Late A. Yadagiri, Occ- Business, R/o. H.No. 29-1405/1/A, Deendayalnagar. Neredmet, Secunderabad.

...APPELLANT/COMPLAINANT

AND

1. Smt. M. Manjula, W/o. Mallikarjun, Occ - Business, R/o. H.No. 5-1-22, Village Old Meerpet, Mallapur Area, Mandal Uppal, Ranga Reddy District.

...RESPONDENT/ACCUSED

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

...RESPODENT/RESPONDENT

Counsel for the Appellant : Sri. Kotagiri Sreedhar

Counsel for the Respondent No. 1 : Mr. K. Venumadhav

Counsel for the Respondent No. 2 : Mr. K. Ramakotaiah Assistant Public Prosecutor

The Court delivered the following:

THE HONOURABLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL APPEAL No.279 OF 2018

JUDGMENT:

This appeal is preferred by the appellant seeking to set aside the judgment dated 09.07.2015 in C.C.No.239 of 2014 on the file of the learned IV Special Magistrate at Hasthinapuram (for short, "the trial Court").

2. Heard Mr.Kotagiri Sreedhar, learned counsel appearing on behalf of the petitioner, Mr.K.Venumadhav, learned counsel appearing on behalf of the unofficial respondent No.1 and Mr. K.Ramakotaiah, learned Assistant Public Prosecutor appearing for respondent No.2-State.

3. The brief facts of the complaint are that on 07.01.2014, respondent No.1/accused borrowed an amount of Rs.10,00,000/- from the appellant/complainant as a hand loan and promised to repay in a short time. On 23.05.2014, the accused had issued a postdated cheque bearing No.616110 dated 19.06.2014 for an amount of Rs.10 lakhs, drawn on the Andhra Bank, Nacharam Branch, Hyderabad towards discharge of legally enforceable debt and the complainant had presented the said cheque in his bank i.e., in Bank of India, Neredmet Branch, Secunderabad on

01.07.2014, but the same was returned dishonoured on 05.07.2014 with an endorsement "Funds Insufficient", that the complainant got issued legal notice dated 11.07.2014 to the accused, demanding the accused to repay the cheque amount within the stipulated period, but he failed to repay the cheque amount, though the accused had received the notice on 15.07.2014. Hence, the accused was alleged to have committed the offence punishable under Section 138 of the Negotiable Instruments Act (for short, "the NI Act").

4. The trial Court, vide impugned judgment, found respondent No.1 not guilty for the offence under Section 138 of the NI Act and acquitted him. Aggrieved by the same, the appellant preferred the Criminal Appeal.

5. Learned counsel for the appellant contended that the trial Court failed to appreciate the evidence available on record in proper perspective and rendered the impugned judgment. Therefore, he seeks to set aside the impugned judgment.

6. Learned counsel for unofficial respondent No.1 and learned Assistant Public Prosecutor contended that the trial Court, upon careful scrutiny of the material available on record, passed the impugned judgment and the interference of this Court is

unwarranted. Therefore, learned counsel seeks to dismiss the Criminal Appeal.

7. On behalf of the complainant, the trial Court examined PW.1 and marked Exs.P1 to P6. On behalf of the accused, none were examined and no document was marked. Upon careful scrutiny of the oral and documentary evidence, the trial Court observed that as per the evidence of PW1, he was not doing any business since the year 2014. PW1 further stated that he closed the construction business and collected an amount of Rs.10 lakhs from several persons. But the complainant failed to adduce any evidence to show that, how much amount he had collected from each person and how could the complainant secure such huge amount of Rs.10 lakhs as on the date of lending amount to the accused. Even if it is presumed that PW1 collected the amount from third parties, the complainant failed to examine any such person, before the Court, to show that he had collected various amounts from different persons. The trial Court also observed that the complainant failed to state the exact date, month and year on which he lent money to the accused. Thus, he failed to prove that the accused issued Ex.P1/cheque to discharge legally enforceable debt. Further, PW1 in his cross

examination, stated that he is an income tax assessee and the present amount of Rs.10 lakhs was shown in his income tax returns. But the complainant failed to file at least a copy of his income tax return to establish that he is in possession of the amount of Rs.10 lakhs, prior to lending it to the accused. Therefore, upon taking into consideration, the above stated facts, the learned Judge of the trial Court found that the mandatory requirements as enshrined in the NI Act are not being complied with by the complainant has acquitted the accused for the offence under Section 138 of the NI Act.

8. 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.

9. 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

[1] (2011) 9 SCC 479

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 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."

10. 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 found

[2] (2011) 8 SCC 635

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.

11. In view of the Judgments referred 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.

12. Accordingly, the Criminal Appeal is dismissed confirming the judgment dated 09.07.2015 in C.C.No.239 of 2014 on the file of the learned IV Special Magistrate at Hasthinapuram.

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

Sd/- T. KRISHNA KUMAR
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The IV Special Magistrate, Hasthinapuram, RR District. (With records)
2. One CC to Sri. Kotagiri Sreedhar, Advocate [OPUC]
3. One CC to Mr. K. Venumadhav, Advocate [OPUC]
4. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
5. Two CD Copies

DL/gh

HIGH COURT

DATED:26/06/2024

JUDGMENT

CRLA.No.279 of 2018

DISMISSING THE CRIMINAL APPEAL

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