

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY, THE TWENTY SIXTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL APPEAL NO: 407 OF 2018

Appeal filed under Section 378(4) of Cr.P.C., against the Judgment dated 11.01.2017 passed in Cri.Appeal No. 203 of 2017 on the file of the Court of the III Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B.Nagar preferred against the Order dated 25.01.2018 passed in C.C.No. 201 of 2016 on the file of the Court of the X Special Magistrate at Hastinapuram, L.B.Nagar, R.R.District.

Between:

S. Dhanraj, S/o. Late Sangappa, Age: 46 years, Occ-Business, R/o. H.No. 2-1-41, Opp- Rajyalaxmi Theatre, Uppal Ring Road, Hyderabad -500039, Telangana State

...Appellant/Complainant

AND

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

...1st Respondent/State

2. R. Suryanarayana, S/o. R. Buchaiah, Age: 49 years, Occ: Business, R/o. H.No. 1-8-3/25, Chikkadapally, Hyderabad

...2nd Respondent/Accused

Counsel for the Appellant : Sri Thota Venkatesham

Counsel for Respondent No. 1 : Ms. S. Madhavi, Assistant Public Prosecutor

Counsel for Respondent No.2 : None appeared

The Court delivered the following: JUDGMENT

THE HONOURABLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL APPEAL No.407 OF 2018

JUDGMENT:

This appeal is preferred by the appellant against the judgment dated 11.01.2017 in C.C.No.201 of 2016 passed by the learned X Special Magistrate, Hastinapuram, L.B.Nagar, R.R.District (for short, "the trial Court") wherein the learned Magistrate acquitted respondent No.2/accused for the offence under Section 138 of the Negotiable Instruments Act (for short, "the NI Act").

2. Heard learned counsel for the appellant, Ms. S. Madhavi, learned Assistant Public Prosecutor appearing for respondent No.1-State. Perused the record.

3. The brief facts of the complaint are that respondent No.1/accused borrowed an amount of Rs.2,33,000/- (Rupees two lakhs thirty three thousand only) from the appellant/complainant on 02.12.2013 and issued four cheques bearing Nos. 027044, 027042, 027043 and 027045 for Rs.50,000/- each and cheque bearing No.027044 for Rs.33,000/- on different dates, in total

Rs.2,33,000/-. It is submitted that on presentation, the said cheque bearing No.027042, dated 10.02.2014 for rs.50,000/- was returned as dishonoured with an endorsement "funds insufficient". Then the complainant issued legal notice dated 19.03.2014 to the accused demanding him to pay the amount due within the stipulated time, which was returned unserved and since there was no compliant of the cheque amount by the accused the complainant filed a complaint against the accused for 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.2/accused not guilty for the offence under Section 138 of the NI Act and acquitted him. Aggrieved by the same, the appellant, who is the complainant herein filed the present appeal.

5. Learned counsel for the appellant 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.

6. Learned counsel for the respondent No.2 and as well as 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 appeal.

7. On behalf of the complainant, the trial Court examined complainant as PW1 and marked Exs.P1 to P5. On behalf of the defence, none were examined and no documents were marked. Upon careful scrutiny of the oral and documentary evidence, the trial Court by relying upon the decision rendered by the Hon'ble Supreme Court in **John K. John Vs Tom Varghese¹, Krishna Janardhan Bhat vs D.G.Hedge², Bharat Barrel & Drum Manufacturing Company vs Amin Chand Pyarelal³ and John K. Abraham vs Simon C. Abraham⁴ etc.**, observed

¹ AIR 2008 (SC) 276

² AIR 2008 (SC) 1325

³ 4 (1999) 3 SCC 35

⁴ 2014 (2) ALJ (Cr.) 61 (SC)

that the complainant failed to prove the necessary ingredients of legally enforceable debt and issuance of cheque by the accused towards any such legal liability beyond all reasonable doubt and 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*⁵ 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

⁵ (2011) 9 SCC 479

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 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**⁶ 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 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 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.

12. Accordingly, the appeal is dismissed confirming the judgment dated 11.01.2017 in C.C.No.201 of 2016 passed by the learned X Special Magistrate, Hastinapuram, L.B.Nagar, R.R.District.

⁶ (2011) 8 SCC 635

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

Sd/- T. SRINIVAS
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The X Special Magistrate at Hastinapuram, L.B.Nagar, R.R.District. (with records)
2. The III Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B.Nagar.
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
4. One CC to Sri Thota Venkatesham, Advocate [OPUC]
5. Two CD Copies

Njb/DL

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HIGH COURT

DATED:26/07/2024



JUDGMENT

CRLA.No.407 of 2018

DISMISSING THE CRIMINAL APPEAL

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4/11/24