[3299]

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

MONDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL APPEAL NO: 1283 OF 2018

Criminal Appeal filed under Section 378(4) of Cr.P.C., against the Order dated 19-01-2018 passed inCrl.A.No.601 of 2016 on the file of the Court of the XIV Additional Metropolitan Sessions Judge, Cyberabad, Ranga Reddy District at L.B.Nagar preferred against the Judgment dated 30-04-2016 made in C.C.No.157 of 2014 on the file of the Court of the IV Special Magistrate L.B.Nagar, Ranga Reddy District at Hastinapuram.

Between:

R.Sudhakar, S/o Anjaiah, Occ.Business, R/0.5-2, Sardhamagar, Maheshwaram Mandal, R.R. District, Telangana State.

... Petitioner/Complainant

AND

1. The State of Telangana, Rep. by its Public Prosecutor, High Court at Hyderabad.
2. M.G.Ramesh, S/o M.G. Paramkusha Rao, Occ. Compounder Under Dr.M.G.Sai Prasad atThukkuguda, Maheshwaram(M), R.R.District, R/o.H.No.17-1-386/1/S/15, Green Park Colony, Rd. No.3, Kharmanghat, R.R.District.

...Respondents

Counsel for the Appellant : Sri P Jagadish Chandra Prasad

Counsel for the Respondent No.1 : Sri Rama Kotaiaha, Assistant Public Prosecutor

Counsel for the Respondent No.2 : Sri Krishna Kalyan

The Court delivered the following: Judgment

THE HONOURABLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL APPEAL No.1283 OF 2018

JUDGMENT:

This appeal is preferred by the appellant aggrieved by the judgment dated 13.04.2016 in C.C.No.157 of 2014 on the file of the learned IV Special Magistrate, L.B. Nagar, at Hasthinapuram (for short, "the trial Court") wherein and whereunder 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 Mr.P.Jagadish Chandra Prasad, learned counsel for the petitioner, Mr.Rama Kotaiah, learned Assistant Public Prosecutor appearing for respondent No.1-State and Mr.Krishna Kalyan, learned counsel for unofficial respondent No.2.

3. The brief facts of the case are that the appellant/complainant and respondent No.2/accused are acquainted to each other. Basing on such acquaintance, on 11.05.2011, the complainant lent an amount of Rs.8,00,000/- to the accused, for which the accused has given pass book and title deed for security and the accused promised to repay the amount within two years. But he failed to pay the money within the stipulated time. But, on persistent demands made by the

complainant, the accused issued a cheque bearing No.530383 dated 02.01.2014 drawn on Andhra Bank, Tukkuguda Branch, R.R.District, in favour of the complainant. On presentation, the cheque was dishonoured with an endorsement, "funds insufficient". Later, the complainant issued legal notice dated 28.01.2014 to the accused. But the accused failed to pay the amount within the stipulated time. Hence, 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 Assistant Public Prosecutor and learned counsel for respondent No.2 contended that the trial Court upon careful

scrutiny of the material available on record, acquitted respondent No.2/accused and the interference of this Court is unwarranted. Therefore, they seek to dismiss the appeal.

7. On behalf of the complainant, the trial Court examined PWs.1 and 2 and marked Exs.P1 to P9. On behalf of the defense, DW1 was examined and Exs.D1 to D3 were marked. PW1, in his chief affidavit, re-iterated the averments made in the complaint. He stated that the complainant lent an amount of Rs.8,00,000/- to the accused, for which he had given pattadar pass book and title deed which was marked as Exs.P8 and P9. But, there is no documentary evidence filed by the complainant to show that the accused had given them as security for the amount of Rs.8,00,000/- taken by the accused. Therefore, without any documentary evidence, it cannot be said that Exs.P8 and P9 were given by the accused, to the complainant towards security to the amount taken by the accused.

8. PW1, in his cross-examination, clearly admitted that he did not obtain any pro-note or any receipt or any other document from the accused to show that the complainant had paid the amount and the accused had received the amount. PW2, in his cross-examination, also deposed that no paper was reduced into

writing between both the parties when the amount was paid by the accused. Therefore, it cannot be presumed that the complainant had paid the amount to the accused and in turn, accused had received the amount.

9. The version of the accused was that he had borrowed an amount of Rs.50,000/- from one Ramu, who is private financier of Tukkuguda and in that connection the accused had given blank signed cheque (Ex P1) and also Exs.P8 and P9 to the said Ramu and that the complainant purchased the said documents from Ramu and filed the present case against the accused with false allegations. But, the accused failed to adduce either oral testimony in support of his contentions or the documentary evidence to that effect and therefore, the contentions of the accused that he had given the documents to one Ramu at the time when he borrowed the amount from Ramu, cannot be considered.

10. On perusal of the cross-examination of PW1, it was observed that the complainant had been doing real estate business since, 2010. But, he clearly admitted that during his cross-examination he did not state the said fact in his complaint. The cross examination of PW1, further shows that he is not an

income tax assessee and that he never filed income tax returns. Further, the complainant did not state as to how much amount he is getting per annum on real estate business. Therefore, it can be presumed that the complainant has been earning less amount on which income tax is not liable to be collected. Therefore, the version of the complainant was unbelievable and hence, acquitted the accused vide impugned judgment.

11. 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.

12. 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 the order of acquittal is found and to come to its own

[1] (2011) 9 SCC 479

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."

13. 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 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

[2] (2011) 8 SCC 635

to examine as to whether the trial Court, while upsetting the acquittal, has taken such care.

14. 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.

15. Accordingly, the appeal is dismissed confirming the judgment dated 13.04.2016 in C.C.No.157 of 2014 on the file of the learned IV Special Magistrate, L.B. Nagar, 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 XIV Additional Metropolitan Sessions Judge, Cyberabad, Ranga Reddy District
2. The IV Special Magistrate L.B.Nagar, Ranga Reddy District at Hastinapuram.
3. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad [OUT]
4. One CC to Sri P Jagadish Chandra Prasad, Advocate [OPUC]
5. One CC to Sri Krishna Kalyan, Advocate [OPUC]
6. Two CD Copies

ADK/PR

HIGH COURT
DATED:01/07/2024

JUDGMENT

CRLA.No.1283 of 2018

DISMISSING THE CRLA

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