

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

**TUESDAY, THE SECOND DAY OF JULY
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL APPEAL NO: 1337 OF 2018

Appeal under Section 378(4) of Cr.P.C., against the Judgment dated.08-02-2018 in Calender Case No. 120 of 2016 on the file of the II Special Magistrate at Hyderabad.

Between:

G.Shiva Reddy, S/o. G. Srinivasa Reddy, Occ: Business, aged about 40 years, Occ: Business, R/o Flat No.103, SK Mansion, Opp: Saibaba Temple, Srikrishna colony, Hasmathpet, Old Bowenpally, Secunderabad.

...APPELLANT/COMPLAINANT

AND

1. Kunuku Chiranjeevi, S/o K Bhiksham, aged about 35 years, Occ: Business, R/o. H.No. 3-7-146, Rajeev Nagar, Barlapenta Bazar, Suryapet-508226, Nalgonda District.

RESPONDENT/ACCUSED

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

...RESPONDENT

Counsel for the Appellant: Sri T Prasanna Kumar

**Counsel for the Respondent No.2: Sri Rama Kotaiah,
Assistant Public Prosecutor**

The Court made the following: JUDGMENT

THE HONOURABLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL APPEAL No.1337 OF 2018

JUDGMENT:

This appeal is preferred by the appellant against the judgment dated 08.02.2018 in C.C.No.120 of 2016 passed by the learned II Special Magistrate, Hyderabad (for short, "the trial Court") wherein and whereunder the learned Magistrate acquitted respondent No.1/accused for the offence under Section 138 of the Negotiable Instruments Act (for short, "the NI Act").

2. Heard Mr. Prasanna Kumar, learned counsel for the appellant, Mr. K. Rama Kotaiah, learned Assistant Public Prosecutor appearing for respondent No.2-State. Perused the record.

3. The brief facts of the complaint are that respondent No.1/accused borrowed an amount of Rs.4,00,000/- (Rupees four lakhs only) by way of cash from the appellant/complainant and executed a hand loan agreement dated 13.02.2013, agreeing to repay the amount within a period of one year and issued a cheque bearing

No.332878, dated 10.12.2013, for an amount of Rs.4,00,000/- drawn on HDFC Bank, Snehapuri Colony, Nacharam, Hyderabad. It is submitted that on presentation, the said cheque was returned as dishonoured. Then the complainant got issued legal notice dated 25.02.2014 to the accused demanding him to pay the amount within the stipulated time. But the accused failed to pay the due amount. 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.1/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 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 PW1, PW2 and marked Exs.P1 to P7. On behalf of the defence, DW1 and DW2 were examined and no documents were marked. Upon careful scrutiny of the oral and documentary evidence, the trial Court observed that the complainant was able to show that an amount of Rs.2,00,000/- only was paid to the accused and with regard to payment of cash of Rs.2,00,000/- there was no evidence, in view of the discrepancies in the Ex.P6, complaint and the evidence, the trial Court opined that the complainant failed to discharge the burden of establishing and existence of legally enforceable debt of Rs.4,00,000/-. Therefore, the complainant failed to discharge the burden

of establishing the existence of legally enforceable debt to the extent of Rs.4,00,000/-. The trial Court further observed that the complainant loses the benefit of presumption under Section 139 of N.I.Act and in the absence of clear evidence of existence of legally enforceable debt accused cannot be held guilty and came to a conclusion that the complainant failed to prove all the ingredients of Section 138 of N.I.Act and acquitted the accused for the offence punishable under Section 138 of the N.I.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

¹ (2011) 9 SCC 479

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 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 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.

² (2011) 8 SCC 635

12. Accordingly, the appeal is dismissed confirming the judgment dated 08.02.2018 in C.C.No.120 of 2016 passed by the learned II Special Magistrate, Hyderabad.

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

Sd/- I. NAGA LAKSHMI
DEPUTY REGISTRAR

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SECTION OFFICER

To

1. The II Special Magistrate at Hyderabad. (With Records if any)
2. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad (OUT)
3. One CC to SRI. T PRASANNA KUMAR, Advocate [OPUC]
4. Two CD Copies

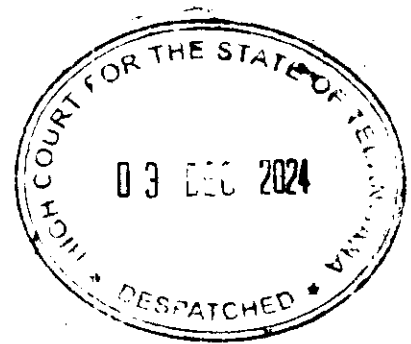
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HIGH COURT
DATED: 02/07/2024

JUDGMENT

CRLA.No.1337 of 2018



DISMISSING THE CRL.APPEAL

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