

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WEDNESDAY, THE TWENTY FIRST DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL NO: 1137 OF 2013

Criminal Appeal filed under Section 378(4) of Cr.P.C., against the Judgment dated 04.10.2013 passed in CC.No.73 of 2010 on the file of the Court of the Judicial First Class Magistrate at Nakrekal.

Between:

Gidipati Ravi, S/o Ramanna, Hindu Occ: Business, R/o Nakrekal Village and Mandal Nalgonda District.

...Appellant/Complainant

AND

1. Rachakonda Srinivasa Rao, S/o Rammurthy, Occ: Business R/o Nereducharla Village and Mandal Nalgonda District
2. The State of AP., Rep by its Public Prosecutor High Court of AP., Hyderabad

...Respondents/Accused

Counsel for the Appellant : Sri K Rajitha

Counsel for the Respondent No.2 : Additional Public Prosecutor

The Court delivered the following: Judgment

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.1137 OF 2013

JUDGMENT:

This Criminal Appeal is filed by the appellant/complainant aggrieved by the judgment dated 04.10.2013 passed in C.C.No.73 of 2010 on the file of the Judicial Magistrate of First Class at Nakrekal.

2. Heard learned counsel for the appellant and learned Additional Public Prosecutor for the respondent – State. Perused the record

3. Vide impugned order, the trial Court had acquitted the accused. Aggrieved by the said order, the appellant/complainant is before the trial Court. He has filed a complaint under Section 138 of the NI Act against the respondent/accused on the ground that an amount of Rs.2.00Lakhs was taken as hand loan. At the time of taking the loan, a demand promissory note was also executed in favour of the complainant. Though several attempts were made by the complainant for repayment of the outstanding amount, the amount was not repaid. However, the cheque for Rs.50,000/- was given. The said cheque when presented for clearance, the same was returned unpaid with endorsement

"insufficient funds". Thereafter, notice was sent to the accused to the oil mill address which was correct address of the accused according to the complainant. The said notice was returned on the ground that the accused was continuously absent for a period of seven (07) days.

4. Having gone through the evidence placed by both the complainant and accused, the learned Magistrate found that it is specific case of the accused that he had closed his oil mill. The notice was sent to the said oil mill and however, the Court had issued NBWs since the summons were not honoured by the accused. Further, the Advocate Commissioner was also appointed to execute the said NBWs and thereafter, the accused attended the Court.

5. The learned counsel for the appellant/complainant would submit that the burden is on the accused to prove that he was not present in the address which is the oil mill. The oil mill address what the complainant had. Accordingly he had sent notice and also summons to the said oil mill. In the said circumstances, when the notice was sent to the address which was available with the complainant, presumption has to be drawn that the notice was served on the accused.

6. It is the specific case of the accused that the oil mill was closed. The said fact can be gathered from the notice being returned on the ground that there was continuous absence of the accused and further, the summons which were sent to the said oil mill address were not served. The Court had to undertake the exercise of appointing the Advocate Commissioner and NBWs were executed. It is apparent from the above facts that the accused was not present in the said oil mill. Unless the notice is served on the complainant or sent to the correct address, only in such an event, the prosecution can be maintained under Section 138 of the NI Act. I do not find any infirmity with the findings of the learned Magistrate in dismissing the complaint since notice was not served on the accused. The appeal fails and liable to be dismissed.

7. Accordingly, the Criminal Appeal is dismissed.

Miscellaneous applications pending, if any, shall stand closed.

Sd/- I. NAGA LAKSHMI
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Judicial First Class Magistrate at Nakrekal. (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 K Rajitha, Advocate [OPUC]
4. Two CD Copies

ADK/DL

HIGH COURT
DATED:21/08/2024

JUDGMENT

CRLA.No.1137 of 2013



DISMISSING THE CRLA

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28/10/24
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