IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY, THE ELEVENTH DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL APPEAL NOS: 39 AND 13 OF 2018

CRIMINAL APPEAL NO: 39 OF 2018

Appeal under Section 378(4) of Cr.P.C against the judgment dated 19-07-2017 passed in CC.No. 40 of 2016(Old No.186/2016) on the file of the court of the VI Special Magistrate, Hyderabad.

Between:

Dondeti Naresh, S/o. Mohana Rao, presently unemployed, R/o. Kothapeta Village and Post, Bayyaram Mandal, Khammam District, presently residing at LIG 258, 3rd Floor, 7th Phase, KPHB Colony, Hyderabad-72

...APPELLANT/COMPLAINANT

AND

1. Manukonda Ramana Rao, S/o. Late Venkataiah, Hindu, Aged 48 years, occ: proprietor of M/s.Anu Consultancy, having its office at H.no. 6-3-43, Bank Colony, Khammam City and District.

...RESPONDENT/ACCUSED

2. The State of Telangana, rep. by the Public Prosecutor, high Court at Hyderabad.

...RESPONDENT

IA NO: 2 OF 2018

Petition under Section 482 of CrPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the Acquittal Judgment passed by the VI Special Magistrate at Hyderabad passed in CC No 40 of 2016 Dated 19.07.2017 pending disposal of this Criminal Appeal.

CRIMINAL APPEAL NO: 13 OF 2018

Appeal under Section 378(4) of Cr.P.C against the judgment dated 19-07-2017 passed in CC.No. 481 of 2015(Old No 1116/2015) on the file of the court of the VI Special Magistrate, Hyderabad.

Between:

Dondeti Naresh, S/o. Mohana Rao, presently unemployed, R/o. Kothapeta Village and Post, Bayyaram Mandal, Khammam District, presently residing at LIG 258, 3rd Floor, 7th Phase, KPHB Colony, Hyderabad-72

...APPELLANT/COMPLAINANT

AND

1. Manukonda Ramana Rao, S/o. Late Venkataiah, Hindu, Aged 48 years, occ. proprietor of M/s.Anu Consultancy, having its office at H.no. 6-3-43, Bank Colony, Khammam City and District.

...RESPONDENT/ACCUSED

2. The State of Telangana, rep. by the Public Prosecutor, high Court at Hyderabad.

...RESPONDENT

Counsel for the Appellant in both Appeals: Mr. PRANANK REP. FOR Mr. MADEPALLI NAVEEN KUMAR

Counsel for the Respondent No.2 in both Appeals: Mr. VIZARATH ALI, ASSISTANT PUBLIC PROSECUTOR

Counsel for the Respondent No.1 in both Appeals: SRI P. BOSU BABU (Not Present)

The Court delivered the following: COMMON JUDGMENT

THE HONOURABLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL APPEAL Nos.13 AND 39 OF 2018

COMMON JUDGMENT:

The Criminal Appeal Nos.13 and 39 of 2018 are filed aggrieved by the judgment dated 19.07.2017 in C.C.No.481 of 2015 and judgment dated 19.07.2017 in C.C.No.40 of 2016 on the file of the learned VI Special Magistrate, Hyderabad respectively (for short, "the trial Court").

2. Since, the issue involved in both these Revision cases is one and the same, they are being disposed of by way of this common judgment.

3. Heard Mr.Pranank, learned counsel representing Mr.Madepalli Naveen Kumar, learned counsel for the petitioner and Mr.Vizarath Ali, learned Assistant Public Prosecutor appearing for respondent No.2-State. There is no representation on behalf of respondent No.1.

For the sake of convenience, the facts in Criminal Appeal No.39 of 2018 are discussed as hereunder:-

4. The brief facts of the case are that the appellant/complainant and respondent No.1/accused were well

acquainted with each other. Out of such acquaintance, the accused requested the complainant to lend an amount of Rs.7,00,000/- to meet his family necessities and promised to repay the said amount within a month. On 05.08.2014, the complainant lent an amount of Rs.7,00,000/- to the accused. It is stated that the accused failed to repay the money even after repeated requests. However, on demand, the accused issued a cheque bearing No.005692 drawn on ICICI Bank, Khammam Branch for a sum of Rs.3,50,000/- in favour of the complainant towards discharge of the part liability. On presentation, the said cheque was dishonoured for the reason, "funds insufficient".

5. The complainant issued a legal notice to the accused on 29.10.2014 intimating him about the dishonour of the cheque and requested him to repay the money within the stipulated period. But the accused, neither replied nor repaid the money. Hence, the accused was alleged to have committed the offence punishable under Section 138 of the Negotiable Instruments Act (for short, "the NI Act").

6. The trial Court vide impugned judgment found the accused not guilty for the offence under Section 138 of NI Act and

acquitted him. Aggrieved by the same, the complainant preferred the present appeal.

7. Learned counsel for the appellant contended that the trial Court without appreciating the evidence available on record in proper perspective acquitted respondent No.1 and seeks to set aside the impugned judgment.

8. Learned Assistant Public Prosecutor contended that the trial Court upon careful scrutiny of the oral and documentary evidence, rightly passed the impugned judgment and the interference of this Court is unwarranted. Therefore, he seeks to dismiss the Appeal.

9. On behalf of the appellant, the trial Court examined PW1 and marked Exs.P1 to P5. On behalf of respondent No.1, none were examined and no document was marked. PW1, being the complainant re-iterated the averments made in the complaint. The defense of the accused is that he has given the cheque to one Sharath as surety which was misused by PW1 and that the signature on Ex P1 cheque did not belong to him. The accused further stated that the Company on which the alleged cheque is drawn is not made as a party to the case and hence, the complaint is not maintainable.

10. Upon careful scrutiny of the oral and documentary evidence, the trial Court observed that PW1, in his cross-examination, admitted that Ex P1 was drawn on behalf of "Anu Consultancy" by Ramana Rao, as an authorized person. PW1 further admitted that he did not send any legal notice to the Anu Consultancy and that the said firm is not shown as an accused in the present case. The legal notice was issued to the accused, in his individual capacity and not as an authorized signatory of Anu Consultancy. Therefore, relying upon the decision passed by the Hon'ble Supreme Court in **"Aneeta Hada Vs. M/s. Godfather Travels & Tours (P) Ltd."**, wherein it is held that in order to maintain the prosecution under Section 141 of the NI Act, arraigning of a company as an accused is imperative and the other categories of offenders can only be brought in a dragnet on a touch stone of vicarious liability which is stipulated in the provision, the trial Court observed that, the complaint itself is not maintainable as "Anu Consultancy" is not made as a party to the case and rendered the impugned judgment, acquitting the accused.

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

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[1] (2011) 9 SCC 479

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 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 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 Criminal Appeal Nos.39 and 13 of 2018 are dismissed.

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[2] (2011) 8 SCC 635

Miscellaneous Petitions, pending if any, shall stand closed.

Sd/-I.NAGA LAKSHMI
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The VI Special Magistrate, 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 Madepalli Naveen Kumar, Advocate [OPUC]
4. One CC to Sri P. Bosu Babu, Advocate [OPUC]
5. Two CD Copies

plp

HIGH COURT

DATED:11/06/2024

COMMON JUDGMENT

CRLA.No.39 and 13 of 2018

DISMISSING BOTH THE CRIMINAL APPEALS

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G.D
7/11/24