APHC010327002008

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3605]**
(Special Original Jurisdiction)

MONDAY, THE 26th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

CRIMINAL APPEAL NO: 919 OF 2008

Between:

S.I. B. Gangadhara Rao, **...APPELLANT**

AND

The State of A.P., Rep By Its PP, Hyd Another and Others **...RESPONDENT(S)**

Counsel for the Apellant:

1. S BALA MOHAN RANGA

Counsel for the Respodent(S):

1. PUBLIC PROSECUTOR (AP)
2. B.ABHAY SIDDHANTH MOOTHA

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

CRIMINAL APPEAL NO: 919 OF 2008

The Court made the following JUDGMENT:

1. This appeal is filed by the Complainant against the Judgment of I Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District, dated 08.01.2007 in C.C.No.899 of 2003, assailing the acquittal of the Accused under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act').

I. BRIEF CONTENTIONS:

2. The learned counsel for the Appellant submits that the Accused and her brother borrowed the amounts from the Complainant. The Accused also in her evidence admitted that after the issuance of the legal notice, her brother and her husband approached the Complainant not to take any action. That the bank account was closed in the year 2002 but the cheque was dishonoured in the year 2003 and these admissions also support that there is a legally enforceable debt and prayed to allow the appeal and convict the Accused.

3. The learned counsel for the 1st Respondent/Accused submits that the Complaint did not disclose any joint borrowing by the Accused and her brother. In the year 2002 itself, she closed her Bank account, and she did not issue the cheque in the year 2003 at her shop. They did not examine the Bank Manager and did not prove the debt and the case, and prayed to dismiss the appeal.

II. THE EVIDENCE BEFORETHE TRIAL COURT AND ITS FINDING:

4. The record reveals that the Complainant was examined as PW1 and also examined PW2 and exhibited P.1 to P.6. The Accused was examined as DW1 and examined DW2 and 3and also exhibited D.1 &2.

5. The Trial Court acquitted the Accused, holding that the Accused could rebut the presumption under Section 139 of the N.I. Act and acquitted the accused.

III. ANALYSIS:

6. The brief case of the Complainant is that on 10.12.2002, the Accused borrowed Rs.60,000/- from the Complainant at Vijayawada as a hand loan for her family and business expenses, agreeing to repay the same with interest at the rate of 24% p.a. but she did not choose to discharge the same despite demands, but at last on17.06.2003 she issued a cheque bearing No.844512 for Rs.60,000/- drawn on Andhra Bank, Labbipet Branch, Vijayawada, towards part payment. The Complainant presented the cheque for encashment through his account in Syndicate Bank, Gandhinagar Branch, the same was returned as dishonoured vide Memo dated 18.06.2003 with an endorsement that “Insufficient Funds”. On 25.06.2003, the Complainant issued a registered legal notice calling upon the Accused to pay the cheque amount within 15 days. She received the same, but she neither paid the amount nor gave a reply.

7. But PW.1 in his cross-examination stated that by the time of taking the hand loan, the Accused was doing computer business in the name of M/s. S.S.Enterprises and on 17.06.2003, the cheque was issued at her business premises. But he also stated in his cross-examination that the Accused acknowledged the notice at Hyderabad, and the notice sent to the Vijayawada address was returned with an endorsement that “shop closed”. This version of PW.1 shows that the notice addressed to the shop was returned with an endorsement that the ‘shop closed’, on the other address at Hyderabad was served, this version is supporting the case of the Accused that the shop was already closed and they were residing at Hyderabad. It appears the Complainant also issued the notice to the accused with the address at Hyderabad, so the Complainant knew that the accused was at Hyderabad at the relevant point in time.

8. The Complainant also stated in his cross-examination that he knew that the Accused and her husband vacated the house and closed M/s.S.S.Enterprises in the year 2003, and they did not re-open the shop. He/PW1 denied that the M/s.S.S.Enterprises was closed in the year 2001 itself. He/PW1 claimed ignorance as to whether M/s.S.S.Enterprises was taken possession by the father-in-law of the Accused in the presence of mediators, making inventory on 09.12.2002. PW2 deposed in his cross-examination that on payment of the hand loan. That on the date of issuance of the cheque, he/PW.2 and her brother were also present in the shop.

9. If this evidence of PW.1 is taken on its face, it shows that PW1 claimed his ignorance as to whether the premises were taken away from the Accused on 09.12.2002, but admits that the statutory notice sent to Vijayawada address was returned with an endorsement 'shop closed'. This version of PW.1 is running contrary to his case that the cheque was issued at the Shop by the Accused on 17.06.2003.

10. DW1 in her evidence deposed that the Accused did business in the premises till December, 2001 and Ex.D2/Mediator's Report shows that the business was closed in December, 2001 and in the year 2002 itself the Bank account was also closed. She was residing at Hyderabad, and the Notice was also served on her at Hyderabad, she exhibited the Postal Cover/Ex.D2. The Complainant also did not dispute this version that she closed her bank account in the year 2002 itself and she was residing in Hyderabad. DW2 also deposed that he has a shop near the shop of the Accused and she closed the business in the month of December and she shifted her family to Hyderabad and on 09.12.2002 her father-in-law broke open the business premises and removed all articles under a panchanama in the presence of mediators. The Complainant cross-examined him/DW.2, suggesting that he did not have any business near the premises of the Accused, but DW.2 denied the same. But the Complainant did not dispute the break opening of the Shop and mediation proceedings dated 09.12.2002. DW3 also deposed on the same lines of DW2.

11. The Court perused Panchanama/Mediator's Report/Ex.D1, dated 09.12.2002, wherein it was mentioned that the Shop of SS Enterprises was closed in the year 2001, issuing of legal notice for rent and vacation of the shop, the Shop is break opened, noted inventory in the presence of three witnesses. The Complainant suggested DW.1/Accused that this proceeding is prepared with ante date to suit the case, but she denied the same.

12. Thus, the evidence on record corroborates the version of the Accused that she closed the shop much before issuance of the alleged cheque on 17.06.2003. Further, it is improbabalizing the case of the Complainant that on 17.06.2003 the Accused issued the cheque at the shop. Thus, the Accused could rebut the presumption.

13. Thus, the onus has shifted to the Complainant, who is obliged to prove the legally existing debt i.e., payment of the hand loan of Rs.60,000/- on 10.10.2002 and issuance of the cheque on 17.06.2003 in the shop of the Accused for discharge of part of the legally existing debt, but the Complainant could not prove these. The material on record reveals that the Trial Court discussed the evidence in right perspective and held that PW.1 failed to prove the hand loan, the cheque transaction, and establish the guilt of the Accused, consequently acquitted the Accused for the offence under Section 138 of the NI Act. The Complainant could not demonstrate any infirmities in the judgment of the Trial Court warranting interference in this appeal.

14. Accordingly, the Criminal Appeal is dismissed

As a sequel, all pending miscellaneous petitions, if any, shall stand closed.

JUSTICE ALAPATI GIRIDHAR

Dt: 26.10.2026
MMK/PVS/CHD

THE HONOURABLE SRI JUSTICE ALAPATI GIRIDHAR

CRIMINAL APPEAL NO: 919 OF 2008

26.10.2026

MMK/PVS/CHD