

IN THE HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD

TUESDAY, THE THIRTIETH DAY OF APRIL  
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL APPEAL NO: 10 OF 2018

Criminal Appeal Under Section of 378 Cr.P.C. against the Judgment Dated 25.01.2016 in CC No. 224 of 2015 on the file of the Court of the II Special Magistrate at Rajendranagar.

**Between:**

Mr. Madhusudhan, S/o. Venkatesh, Occ-Business, R/o. H.No. 4-75, Himayathnagar Village, CBIT Moinabad Mandal, R.R Dist

...APPELLANT/COMPLAINANT

AND

1. Mudigunda Ravi Yadav, S/o. Late Chinna Venkaiah, Occ-Business, R/o. H.No. 4-60/4, Himayathnagar Village, Moinabad Mandal, R.R District.
2. The State of Telangana, Rep by its Public Prosecutor, High Court at Hyderabad

...RESPONDENT/ACCUSED

Counsel for the Appellant : SRI. N. Naveen Kumar

Counsel for Respondent No.2 : Public Prosecutor Sri Khaja Vizarath Ali  
Assistant P.P

The Court delivered the following : Judgment

THE HON'BLE SRI JUSTICE E.V.VENUGOPAL

CRIMINAL APPEAL No.10 OF 2018

**JUDGMENT :**

This Criminal Appeal is preferred by the appellant/complainant under Section 378 of Criminal Procedure Code (for short 'Cr.P.C.') aggrieved by the judgment dated 25.01.2016 passed by the learned II Special Magistrate, Rajendranagar in CC No.224 of 2015, wherein the 1<sup>st</sup> respondent/accused was acquitted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act').

2. Heard Sri N.Naveen Kumar, learned counsel for the appellant and Sri Khaja Vizarath Ali, learned Assistant Public Prosecutor, representing learned Public Prosecutor for the State/2<sup>nd</sup> respondent. None appeared for the 1<sup>st</sup> respondent/accused.

3. CC No.224 of 2015 is a case registered on the file of the learned Special Judicial Magistrate Court-II, Rajendranagar, Ranga Reddy District basing on the complaint filed under Section 200 Cr.P.C., against the accused/1<sup>st</sup> respondent herein for the offence punishable under Section 138 read with Section 142 of NI Act for dishonour of cheque bearing Nos.501940 dated 06.03.2015 and 501941 dated 05.03.2015 each for Rs.6,00,000/-, i.e. Exs.P1 and P2 issued by the 1<sup>st</sup> respondent in lieu of discharge of legally enforceable

debt i.e. the hand loan of Rs. 12,00,000/- obtained from the appellant herein.

4. It is contended by learned counsel for the appellant that upon repeated requests, the 1<sup>st</sup> respondent issued the subject cheques in discharge of legally enforceable debt but failed to honour the same and hence, the said cheques were returned for the reason "funds insufficient" on 13.03.2015 under Exs.P4 to 7. It is also contended by learned counsel for the appellant that in spite of issuance of Ex.P8 legal notice, the 1<sup>st</sup> respondent failed to repay the said amount and hence, he is liable for punishment in accordance with law.

5. It is the defence of the 1<sup>st</sup> respondent/accused that the appellant had no capacity to lend such a huge amount, crucial document i.e. Ex.P3 promissory note lost its credibility since signatures of attesting witnesses i.e. PWs.2 and 3 were obtained at a later point of time and the same is evident from Ex.D1, which do not contain the signatures of the witnesses, and that in view of void nature of promissory note/Ex.P3, no criminal prosecution can be launched against him and that the dishonoured cheques i.e. Exs.P1 and P2 are the concocted instruments.

6. The Court below, upon considering the entire material available on record in the form of oral evidence of PWs.1 to 3 and

documentary evidence of Exs.P1 to P11 and D1, found the 1<sup>st</sup> respondent/accused not guilty holding that the appellant failed to prove his capacity to lend such huge amount and genuineness and veracity of Ex.P3/promissory note is not established.

7. Aggrieved by the said findings, the present criminal appeal is preferred by the appellant mainly contending that the Court below without appreciating the evidence available on record in a proper perspective, though the appellant complied with all the mandatory provisions under Section 138 of NI Act, acquitted the 1<sup>st</sup> respondent. The learned trial Court placed heavy reliance on Ex.P3 and Ex.D1/photocopy of Ex.P3 with some variance. The Court below failed to consider the admission of 1<sup>st</sup> respondent that the appellant received/benefitted money to a tune of Rs.1,00,00,000/- in a settlement. The 1<sup>st</sup> respondent failed to explain as to how Exs.P1 and P2 went into the hands of appellant. The Court below, though concluded that the notice was served on the 1<sup>st</sup> respondent, failed to give weight to the fact that no reply was issued by the 1<sup>st</sup> respondent. The Court below ignored the presumption available under Sections 118 and 139 of NI Act.

8. On the other hand, learned Assistant Public Prosecutor vehemently opposed the present criminal appeal mainly contending that the learned trial Court has thoroughly examined the entire

material available on record and rightly found the 1<sup>st</sup> respondent/accused not guilty and hence, there is no need or necessity for this Court to set aside the said well considered findings.

9. PW1 is the appellant/complainant. Record shows that he filed his evidence affidavit without signing on it and CrI.MP No.2043 of 2015, filed by PW1 under Section 145(2) of NI Act requesting the Court to permit him to sign on his chief affidavit was dismissed as per orders dated 17.12.2015. Record further shows that no revision is preferred by PW1 against such dismissal order. PWs.2 and 3 are the witnesses to Ex.P3/promissory note, executed by the 1<sup>st</sup> respondent while obtaining hand loan of Rs.12,00,000/- admitting to repay the same within ten months. However, Ex.D1, which is a photocopy of Ex.P3, made Ex.P3 a void document since it does not bear the signatures of witnesses i.e. PWs.2 and 3. In such circumstances, it can be believed that Ex.P3 promissory note was obtained from 1<sup>st</sup> respondent in a blank form duly obtaining his signature and later signatures of witnesses were obtained and the blanks were got filled. Further, important and mandatory ingredient of promissory note i.e. the undertaking of the borrower to repay the amount covered under such instrument as and when demanded by the debtor is missing. Law is settled that in criminal proceedings, the burden heavily rests on the complainant to prove his case beyond all reasonable doubt. However, the appellant did not initiate any

steps to prove the genuineness of Exs.P1 to P3 or Ex.D1 by subjecting the same for examination of the expert.

10. Learned counsel for the appellant relied upon the below mentioned decisions:

- (i) **Basalingappa Vs. Mudibasappa**<sup>1</sup>,
- (ii) **Rajaram through LRs. Vs. Maruthachalam (since deceased) through LRs**<sup>2</sup>,
- (iii) **Rajesh Jain Vs. Ajay Singh**<sup>3</sup>,
- (iv) **Neeraj Dutta Vs. State (NCT of Delhi)**<sup>4</sup>,
- (v) **Sumeti Vij Vs. Paramount Tech Fab Industries**<sup>5</sup>.

11. Basing on the principles laid down in the above decisions, the learned counsel for the appellant vehemently contended that when once the complainant succeeded in proving that the instrument was issued by the accused, presumption under Sections 113 and 139 of NI Act shift the burden on to the accused to prove that the said cheque was issued for the purposes other than discharge of a legally enforceable debt. Further, adjudication in civil matters is based on preponderance of probabilities whereas, adjudication in criminal cases is based on the principle that the accused is presumed to be innocent and the guilt of the accused should be proved to the hilt and the proof should be beyond reasonable doubt. Further, creation of a doubt cannot rebut the presumption envisaged under Section 139 of NI Act. When the

<sup>1</sup> (2019)5 SCC 418

<sup>2</sup> 2023 SCC OnLine SC 48

<sup>3</sup> (2021) 10 Supreme Court Cases 148

<sup>4</sup> (2023) 4 Supreme Court Cases 731

<sup>5</sup> (2021) 15 Supreme Court Cases 689

signature on the cheque having not been disputed and the presumption under Sections 118 and 139 having taken effect, the complainant's case stood satisfied every ingredient necessary for sustaining a conviction under Section 138 of the Act. The case of the defence was limited only to the issue as to whether the cheque has been issued in discharge of a debt or liability. Once the presumption under Section 139 of NI Act was given effect the Courts ought to have proceeded on the premise that the cheque was issued in discharge of a legally enforceable debt or liability. Section 64 of the Evidence Act denotes that documents must be proved by primary evidence and once the document is admitted, the contents therein are also admitted in evidence though they may not be conclusive. Every negotiable instrument is made or drawn for consideration and once it is admitted or proved it deems that the same was issued in discharge of a debt or liability. The proceedings under Section 138 of NI Act are quasi-criminal in nature and principles which apply for acquittal in other criminal cases are not applicable in the cases instituted under the Act.

12. Be that as it may, the facts of the case on hand are quite distinguishable when compared with the principles laid down in the above referred decisions. Here in the case on hand the 1<sup>st</sup> respondent/accused could able to deny his liability by marking Ex.D1 photocopy of Ex.P3 and contending that Ex.P3 was

subsequently altered and signatures of witnesses were obtained later. The appellant did not initiate any steps to test the genuineness or otherwise of the said documents. It is the settled proposition of law that any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. When a cloud is surrounded around the genesis of Ex.P3 promissory note, the said document cannot be treated as an instrument fortifying the proof of existence of legally enforceable debt. Further, in view of the negligent act of the appellant in forgetting to sign on his chief evidence affidavit, made the same disentitled for consideration. His effort to convince the Court to accord permission to sign on the said affidavit remained futile and he did not initiate steps to get the said orders reviewed. The prosecution evidence cannot suffice to prove the guilt of the accused since it has so many inconsistencies and discrepancies. The complaint is silent regarding the presence or existence of witnesses to Ex.P3. The explanation offered regarding the discrepancies between Ex.P3 and Ex.D1 does not convince or satisfy the consciousness of this Court.

13. So far as the income source of the appellant is concerned, it can be safely held that the burden of proof lies with the complainant to prove the transaction and the accused need only to

discharge the initial burden of proof. The source of income for the loan need not be proved, but the complainant's evidence must inspire confidence. But in the case on hand, the appellant failed to shift his burden on to the 1<sup>st</sup> respondent/accused by adducing cogent and concrete evidence.

14. In such factual matrix, the finding of the Court below that the appellant/complainant failed to prove the liability of the 1<sup>st</sup> respondent/accused for dishonour of Exs.P1 and P2 cheques cannot be called as erroneous or perverse and hence, the present criminal appeal cannot hold water warranting interference of this Court to set aside the impugned judgment.

15. In the result, this criminal appeal is dismissed. Miscellaneous applications if any pending shall stand dismissed.

Sd/- B.S. CHIRANJEEVI  
JOINT REGISTRAR

*[Signature]*  
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SECTION OFFICER

To,

1. The II Special Magistrate at Rajendranagar, Ranga Reddy District.(With records, if any)
2. Two CCs to Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
3. One CC to Sri. N Naveen Kumar, Advocate [OPUC]
4. Two CD Copies

DL/gh

*[Signature]*

HIGH COURT

DATED:30/04/2024

JUDGMENT

CRLA.No.10 of 2018



DISMISSING THE CRIMINAL APPEAL

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30/04/24  
DR