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Court : Andhra Pradesh

Decided On : Mar-20-2012

Judge : N.R.L. Nageswara Rao

Appeal No. : Criminal Appeal No. 1694 of 2005

Appellant : Dasari Venkateswarlu

Respondent : State of A.P., Through Its Public Prosecutor,and Another

Judgement :

1. The appeal is filed against acquittal of the accused in Criminal Appeal No.204 of 2002 by I Additional District and Sessions Judge, Ongole, setting aside the conviction and sentence imposed by II Additional Judicial Magistrate of First Class, Ongole, in C.C. No.195 of 2002.

2. A complaint under Section 138 of Negotiable Instruments Act (for short 'the Act') has been filed on the ground that the accused has borrowed a sum of Rs.90,000/- from the complainant on 11.11.2000 and subsequently towards discharge of the debt he has given cheque dated 02nd April 2002 which was presented and it was dis-honoured, as the account said to have been closed even prior to the issue of the cheque. The court below, after conducting trial, has accepted the prosecution case and convicted the accused for the offence under Section 138 of the Act and

sentenced him to undergo simple imprisonment for a period of one year and to pay a compensation of Rs.1,20,000/-. As against that judgment, the appellate court having accepted that the cheque was issued for a legally enforceable liability as on the date of issue of the cheque, however, found that the offence under Section 138 of the Act is not made out, as the cheque was issued after closure of the account by the accused. Aggrieved by the said judgment, the present appeal is filed.

3. The point for consideration is whether the acquittal of the accused recorded by the court below is legal and sustainable?

4. Point:

Since the accused was avoiding to take summons, Sri K. Giridhar Raju, advocate, is appointed as State Brief and legal aid counsel to represent on behalf of the accused.

5. As can be seen from the record and findings of both the courts, the cheque was issued for a legally enforceable liability. It is also not in dispute that the cheque was dishonoured and the cheque was said to have been issued after closure of the account. Though the counsel for the appellant relied on the decision in N.E.P.C. Micon Limited V. Magma Leasing Limited (AIR 1999 SC 1952) whereunder the Apex Court has held that an offence under Section 138 of the Act is made out even if the account is closed after issuing of the cheque and it is dishonoured would attract the punishment, but however the learned Sessions Judge relied upon another judgment of Gujarat High Court in Urban Co-Operative Credit Society, Borsad V. State of Gujarat (2004 (2) ALD (Crl.) 54) wherein a distinction is drawn about issuing of a cheque after closure of the account and closure of the account after issue of the cheque. The learned Judge found that in this case the cheque was issued after closure of the account and therefore following the reasoning of the Gujarat High Court acquitted the accused.

6. The judgment of the Gujarat High Court was subsequently considered in another decision in Hashmikant M. Sheth V. State of Gujarat and another (2004 Cri.L.J 3628) and held that dishonour of cheque which was issued after closure of

the account maintained by the drawer amounts to an offence under Section 138 of Negotiable Instruments Act and the decision which was relied on by the court below of the Gujarat High Court was held to be per incuriam.

7. The learned counsel for the appellant has relied upon the judgment of our own High Court in G. Venkataramanaiah V. Sillakollu Venkateswarlu and another (1999 (3) ALD 7194) wherein it has been categorically held that where an account if closed after a cheque is given or account is closed before the cheque is given, one can safely say that, although it has been returned on account of closure of account but it would in effect mean insufficiency of funds in the account of the person who gave the cheque. Consequently the Court held that an offence under Section 138 of the Act has been made out and it was also found that a dishonest person would resort to such types of tactics to avoid liabilities.

8. When the judgment of our own High Court lays down the correct law, it is not permissible for the learned Sessions Judge to have relied upon the judgment of the Gujarat High Court and acquitting the accused. Therefore, the judgment of the appellate court is set aside and the accused is found guilty of the offence under Section 138 of the Act and is accordingly convicted under Section 255 (2) Cr.P.C. The accused is sentenced to pay a fine of Rs.2.00 lakhs (Rupees two lakhs only) out of which Rs.1,90,000/- (Rupees one lakh ninety thousand only) shall be paid as compensation to the appellant. In default of payment of fine within three months, accused to suffer rigorous imprisonment for one year. The lower court is directed to take necessary steps.

9. Accordingly the criminal appeal is allowed. The fee of Legal Aid counsel is Rs.1,500/- to be paid by the Legal Services Authority.