

(2022) 10 TEL CK 0050
In the Telangana High Court
Case No : Criminal Appeal No. 1136 Of 2009

K.Ramakrishna Reddy

APPELLANT

Vs

Pullagura Sudhakar And Another

RESPONDENT

Date of Decision : 19-10-2022

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138

Citation : (2022) 10 TEL CK 0050

Hon'ble Judges : K.Surender, J

Bench : Single Bench

Advocate : A Hariprasad Reddy

Final Decision : Dismissed

Judgement

1. This Criminal Appeal is filed by the Appellant/ defacto complainant aggrieved by the Judgment of the Special Judge for trial of offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge, Secunderabad in Crl.A.No.229 of 2008, dt.13.02.2009, whereby the Sessions Court set aside the conviction recorded by the trial Court in C.C.No.397 of 2005 dt. 16.07.2008 and acquitted the accused for the offence under Section 138 of the Negotiable Instruments Act.

2. Briefly, the case of the complainant is that a cheque was issued by the 1st respondent/accused for Rs.1,60,000/- as he was due to the appellant/complainant, on account of the complainant paying Rs.1,60,000/- as consideration for purchasing a plot in the name of accused. The said amount was given to the vendors of the accused and when the accused issued the cheque towards discharge of his debt, the said cheque was returned unpaid for the reason of insufficient funds. A statutory notice was sent and since the accused failed to pay the amount covered by cheque, the complainant/appellant filed a private complaint under Section 138 of the Negotiable Instruments Act before the learned Magistrate.

3. Learned Magistrate having examined the complainant as PW1 and marking Exs.P1 to P6 and also examining the accused who entered into the box as DW1, concluded that the 1st respondent/accused is guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced to one year imprisonment and also imposed fine.

4. Aggrieved by the said conviction, the accused preferred an appeal. On adjudication, the learned Sessions Judge found that the appellant/accused was not guilty for the offence as there was no liability or any legally enforceable debt since the loan amount which was taken by the respondent/accused was credited to the account of the complainant. Further, Ex.D1-Sale Deed was on 19.12.2003 which was earlier to Ex.P5-receipt executed by the 1st respondent/accused in favour of the complainant on 03.09.2004. Ex.P5 was executed on 03.09.2004 i.e. nearly ten months after the purchase of the plot. In the said circumstances, the learned Sessions Judge found that the claim of the complainant was false and there is any amount of suspicion regarding Ex.P5. Ex.P5-receipt was dated 03.09.2004, but, the sale was executed on 19.12.2003. As such, the complainant had taken cheque-Ex.P1 in blank form, which was subsequently filled up.

6. The finding of the learned Sessions Judge was that in the background of Ex.D1-sale deed, it is apparent that Ex.P1 and P5 were fabricated to suit the complainant's case.

7. The construction agreement dt.17.01.2004 was also found to be fabricated by the sessions Judge because it was created under the guise of promise to construct the house for employees. The finding of the learned Sessions Judge is based on record and reasonable.

8. In cases of acquittal, the appellate Court cannot interfere with the order of acquittal unless it is found to be contrary to the evidence on record and also drawing conclusions which are improbable. The conclusions drawn by the learned Sessions Judge are probable and supported by documents.

9. In the said circumstances, the complainant/appellant has not made out any grounds to interfere with the order of acquittal except stating that the cheque is admitted. The reasons given by the Sessions Judge cannot be interfered with.

10. Accordingly, the appeal fails and dismissed.

Miscellaneous applications pending, if any, in this criminal Appeal, shall stand closed.