

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No.898 OF 2008

Between:

K.Ramanaiah.

... Appellant

And

The State of A.P through Public Prosecutor
and another.

... Respondents

AND

Criminal Appeal No.899 OF 2008

Between:

K.Ramanaiah

... Appellant

And

The State of A.P through Public Prosecutor
and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 28.09.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No.898 & 899 of 2008

% Dated 28.09.2022

K.Ramanaiah

... Appellant

And

\$ The State of A.P through Public Prosecutor
and another.

..Respondents

! **Counsel for the Appellant:** Sri D.Madhava Rao

^ **Counsel for the Respondent:** Public Prosecutor

>HEAD NOTE:

? **Cases referred**

1 AIR 2002 SC 3372

2 (2021) 1 SCC 414

3 (2013) 11 supreme court Cases 688

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL Nos.898 and 899 of 2008****COMMON JUDGMENT:**

1. Criminal Appeal No.898 of 2008 is filed against acquittal of the respondent vide judgment in CC No.773 of 2000 dated 11.12.2006 and Criminal Appeal No.899 of 2008 is filed against acquittal of the respondent in CC No.774 of 2000 dated 11.12.2000 passed by the XIV Additional Chief Metropolitan Magistrate, Hyderabad.

2. The appellants and respondents in both the cases are one and the same. The transaction pertaining to Rs.33.00 lakhs taken by way of hand loan and two cheques were issued to discharge the same and two separate cases were filed for two cheques. Since the issue involved in both these appeals is one and the same, they are being heard together and disposed off by way of this Common Judgment.

3. For the sake of convenience, the parties hereinafter will be referred to as arrayed before the trial Court. Briefly, the case of the complainant is that the accused approached him during September, 1998 for hand loan of Rs.33.00 lakhs and promised to pay interest.

On 19.03.1999 and 28.03.1999, the amount was paid and promissory notices were executed. The cheques in question were issued towards repayment of the loan. The accused also issued a letter dated 20.02.2000 acknowledging his liability under Ex.P1. On 12.08.2000, the accused disputed Rs.33.00 lakhs and issued another letter agreeing to pay Rs.16,41,000/-. On 13.08.2000, 'stop payment' instructions were issued to the bank. On 16.08.2000 and 19.08.2000, the accused represented to the Home Secretary, State Government, Task Force Police, Chief Justice of Andhra Pradesh High Court alleging that the cheques were forcibly taken from the accused. On 21.08.2000, the cheques were dishonoured for 'insufficient funds'. On 23.08.2000, legal notice was issued for making good the amount covered by the cheque. However, the accused failed to make payment covered by the cheque, for which reason, the complaints were filed.

4. The complainant examined himself as P.W.1 and marked Exs.P1 to P10 in both the cases. The accused examined himself as D.W.1 and another common friend as D.W.2 and marked Exs.D1 to D14.

5. The trial court acquitted the accused on the following grounds;
- i) The accused has discharged his burden under Section 139 of the Negotiable Instruments Act to show that there was no outstanding as the cheques were taken by force from the accused;
 - ii) The accused approached several authorities complaining about highhandedness of the police.
6. Learned counsel for the complainant submits that civil suit OS No.478 of 2000 was filed, which was decreed in favour of the complainant. The finding of the civil court is binding on the criminal court and though the learned Magistrate accepted the said proposition, erred in finding the accused not guilty only on the basis of the representations given to various authorities. In support of his arguments, he relied upon the judgment of Hon'ble Supreme Court in the case of K.G.Premshanker v. Inspector of Police [AIR 2002 SC 3372] and also Satish Chander Ahuja v. Sneha Ahuja [(2021) 1 SCC 414] and argued that decree passed in civil proceedings is relevant, as provided under Sections 40 and 42 of Indian Evidence Act and shall bind the criminal court.

7. The accused at the earliest point of time had agitated regarding forcibly taking pronotes and cheques in the police station. The said act of the complainant was complained to the Bank and various authorities. The transaction in question as narrated by the complainant in itself creates doubt about the prosecution case being correct. According to the complainant, the amount was sought by the accused in the month of September, 1998. However, the alleged lending was on 19.03.1999 and 20.03.1999 after seven months on two consecutive dates. The source of funds of Rs.33.00 lakhs is also not shown by the complainant. Though, it will not be always necessary to prove that the complainant had the capacity to lend funds, in the present facts of the case, proof of such capacity is necessary. On 20.02.2000, according to Ex.P1, the accused admitted receiving Rs.33.00 lakhs. However, within six months another letter Ex.P2 was issued for paying Rs.16.41 lakhs. The complainant failed to explain as to how the outstanding was agreed upon nearly 50% of the outstanding of Rs.33.00 lakhs. It is not the case of the complainant that any amounts were returned by the accused nor that there were any transactions and specific reasons for reducing the amount from

Rs.33.00 lakhs to Rs.16.41 lakhs. The initial burden is on the complainant to prove the outstanding. Unless such burden is discharged by the complainant, the question of raising presumption under Section 139 of the N.I.Act does not arise to shift the burden on to the accused.

8. Though there is an admission of signatures on the cheques, the accused has specifically taken a defence that they were taken under force and duress. In the back ground of the unexplained transaction regarding Rs.33.00 lakhs being given and without explanation or reason, the said amount being reduced to Rs.16.41 lakhs, it casts doubt on the version of the complainant being correct.

9. The learned counsel argued that the civil suit filed vide OS No.478 of 2000 wherein the civil court decreed the suit in favour of the complainant, binding the criminal court cannot be accepted. According to the complainant, a decree passed in a civil proceeding would be relevant under Section 40 and 42 of the Indian Evidence Act and binds the criminal court. He also relied upon the judgments as stated supra.

10. For the sake of convenience Sections 40 and 42 of the Indian Evidence Act are extracted hereunder:

“40. Previous judgments relevant to bar a second suit or trial. —The existence of any judgment, order or decree which by law prevents any Courts from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.—Judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.”

11. According to Section 40 of the Indian Evidence Act, unless any judgment or decree by operation of law, prevents a Court from taking cognizance or holding trial is relevant when the question is whether such Court ought to have taken cognizance of the suit or to hold trial. The proceedings under Section 138 of the Negotiable Instruments Act are quasi criminal in nature. A civil suit for recovery of money and a case which makes a drawer criminally liable under Section 138 of the Act can be simultaneously made or one after the other. Nothing is shown

by virtue of decree of the civil court in OS No.478 of 2000 or any provision of Law, which prohibits the Magistrate Court from taking cognizance. No question arose for consideration before the Criminal Court whether to take cognizance or to hold trial in the back ground of the decree passed by Civil Court.

12. Under section 42 of the Indian Evidence Act, any decree is relevant, if they relate to matters of public a nature and relevant to the enquiry. There is no public interest involved in the present case and it is purely a money dispute between two private parties. Neither Section 40 nor Section 42 of the Indian Evidence Act binds the Criminal Court about the factual findings of the Civil Court and have to be looked into only for the limited purposes and circumstances as discussed above and specifically mentioned in the provisions. Neither Section 40 nor Section 42 of the Act as already stated, in any manner prohibits the criminal courts from coming to its own conclusions on facts whether an offence under Section 138 of

the Act has been made out or not. The trial Court is wrong in holding that the finding of the Civil Court regarding there being an outstanding, binds the Criminal Court.

13. The judgments cited by the appellant are of no help in the present facts. The accused has exhibited before the Court on the basis of the evidence of the complainant that the transactions are not in the nature of there being a legally enforceable debt.

14. The Hon'ble Supreme Court in the case of **Radhakrishna Nagesh v. State of Andhra Pradesh**¹ held that under the Indian criminal jurisprudence, the accused has two fundamental protections available to him in a criminal trial or investigation. Firstly, he is presumed to be innocent till proved guilty and secondly that he is entitled to a fair trial and investigation. Both these facets attain even greater significance where the accused has a judgment of acquittal in his favour. A judgment of acquittal enhances the presumption of innocence of the accused and in some

¹ (2013) 11 supreme court Cases 688

cases, it may even indicate a false implication. But then, this has to be established on record of the Court.

15. For the foregoing dicussion, the complainant had failed to make out any case either on facts or on law to reverse the finding of the learned Magistrate in acquitting the accused.

16. For the aforementioned reasons, the Criminal Appeals are liable to be dismissed and accordingly dismissed.

K.SURENDER, J

Date: 28.09.2022

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.898 and 899 OF 2008

Dated: 28.09.2022

kvs

