

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

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**Criminal Appeal No. 795 OF 2010**

Between:

N. Madhusudhan Gupta

... Petitioners

And

S.A. Kaleem & another

... Respondents

DATE OF JUDGMENT PRONOUNCED:

14.06.2023

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 |

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**K.SURENDER, J**

**\* THE HON'BLE SRI JUSTICE K. SURENDER**

**+ CRL.A. No. 795 OF 2010**

% Dated 14.06.2023

# N.Madhusudhan Gupta

... Petitioners

And

\$ S.A. Kaleem & another

... Respondents

**! Counsel for the Petitioner:** Sri Gangula Ashok Kumar Reddy

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

**>HEAD NOTE**

**? Cases referred**

1.2012 (1) ALD (CrI.) 166 (AP)

2.2012 (2) ALD (CrI.) 941 (AP)

3.2003 LawSuit (Ker) 309

**HON'BLE SRI JUSTICE K.SURENDER****CRIMINAL APPEAL No.795 OF 2010****JUDGMENT:**

1. This Criminal Appeal is filed aggrieved by the judgment of acquittal for the offence under section 138 of NI Act, recorded by the learned XIV Additional Judge-cum-XVIII Additional Chief Metropolitan Magistrate at Hyderabad vide judgment in C.C.No.224 of 2008, dated 07.09.2009.

2. Briefly, the case of the appellant/complainant is that the appellant filed case under Section 138 of the Negotiable Instruments Act against the respondent/accused stating that the accused was his family friend. accused requested to advance loan amount of Rs.2.00 lakhs and promised to repay in the month of June, 2007. The said amount of Rs.2.00 lakhs was given on 12.02.2006. On 02.08.2007, when the demand was made to repay the said amount, two cheques Exs.P1 and P2 for Rs.1.00 lakh each were given. The said cheques, when presented for clearance, were returned unpaid for the reason of 'funds insufficient'. Legal notice was sent to the accused, who failed to make good the payment covered by the cheques,

for which reason, complaint was filed before the learned Magistrate.

3. Learned Magistrate examined the complainant as P.W.1 and marked Exs.P1 to P9. He found that the major discrepancy in the case of the complainant was non service of mandatory legal notice, copy of which is Ex.P4. According to Exs.P7 and P8 acknowledgements, they did not contain the signature of the accused, as such, there was no proper compliance of service of mandatory notice. Though, it is stated that the accused has given reply notice dated 06.09.2007 to the complainant, the same is not filed into the Court. No satisfactory explanation was offered by the complainant for not filing reply notice sent by the accused, as such, adverse inference was drawn against the complainant's case. The learned Magistrate further found that there is a difference of ink in respect of date, name of the payee and the amount in words in Exs.P1 and P2, for which reason, learned Magistrate found that there was material alteration of the negotiable instrument. Further, Ex.P9, which is a cheque return memo

does not bear the signature and date on it. Accordingly, on the said basis, learned Magistrate recorded acquittal.

4. Learned counsel appearing for the appellant would submit that the Magistrate had erred in recording the acquittal when all the ingredients of Section 138 of the Act were proved. If the case of the accused is that he has sent reply notice that itself would indicate that he has received the notice. As such, the question of not complaining that the mandatory provision under Section 138-B of the Act does not arise. He relied on the judgment of this Court in the case of **G.K.Jaya Raman v. Nambur Laboratories**<sup>1</sup>, wherein this Court was dealing with the issue whether the cheques were issued in blank and also whether any material alterations were made if the blanks were filled up. It was held that use of different ink and different writing does not mean material alteration in the cheque.

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<sup>1</sup> 2012 (1) ALD (CrI.) 166 (AP)

5. In the case of **A.Brahmananda Reddy v. State of Andhra Pradesh and another**<sup>2</sup>, this Court held that when the signature on the cheque was not denied nor the existence of debt or liability, reversed the order of acquittal.

6. In the case of **Mohanani v. Bibhukumar**<sup>3</sup>, the High Court of Kerala held that a person handing over a blank cheque gives an authority to fill up the relevant details and only for the reason of entries in the cheque were with different writings does not mean that the cheque is invalid and that there is no legally enforceable debt.

7. Having perused the record, it is the specific case of the accused that he sent reply notice. It can be safely inferred that the notice in question was received by the accused and for the said reason reply notice was sent by the accused. The finding of the learned Magistrate that there was no compliance of the statutory requirement under Section 138-B of the Act for issuance of mandatory notice, cannot be accepted. The

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<sup>2</sup> 2012 (2) ALD (CrI.) 941 (AP)

<sup>3</sup> 2003 LawSuit (Ker) 309

accused did not explain as to how a signed cheque was in possession of the complainant. When the cheque and the signature was accepted, only on the basis of an admission by P.W.1 that the ink varies with respect to date and writings in the cheque did not in any manner dilute the case of the complainant regarding the outstanding or enforceability of the cheque.

8. Signature on the cheque is accepted. The initial burden in the present facts of the case was discharged by the complainant to raise the presumption under Section 139 of the Act. On the basis of different ink and writings on the cheque as admitted during cross-examination on observation by the complainant, it cannot be said that cheque was not issued by the accused and it amounts to material alteration. It is not the case of the accused that the writings in the cheque are not that of his and he also failed to send the cheque to an expert to deny his writings on the cheque.

9. In view of the above discussion, learned Magistrate was apparently wrong in recording the order of acquittal on the

basis of his findings regarding non service of notice, material alteration in the cheque and not proving the debt or outstanding. Accordingly, the finding of the learned Magistrate has to be reversed.

10. In the result, the Criminal Appeal is allowed and the order of acquittal is set aside. The accused is directed to pay an amount of Rs.3.00 lakhs within a period of three months after his appearance before the trial Court. The trial Court shall cause appearance of the accused and give him time for a period of three months for payment of Rs.3.00 lakhs to the complainant. In the event of failure to pay the amount within the prescribed time, the accused shall undergo imprisonment for a period of six months. Consequently, miscellaneous petitions, if any, pending, shall stand closed.

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**K.SURENDER, J**

Date: 14.06.2023

Note: LR copy to be marked

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**HON'BLE SRI JUSTICE K.SURENDER**

CRIMINAL APPEAL No.795 of 2010

Date: 14.06.2022.

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