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**(2022) 08 TEL CK 0049**

**High Court For The State Of Telangana:: At Hyderabad**

**Case No:** Criminal Appeal No. 318 Of 2008

R.Venkatesh And  
Another

APPELLANT

Vs

K.Chandra Prakash  
And Another

RESPONDENT

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**Date of Decision:** Aug. 3, 2022

**Acts Referred:**

- Negotiable Instruments Act, 1881 - Section 138, 139
- Indian Contract Act, 1872 - Section 23
- Code Of Criminal Procedure, 1973 - Section 378, 386
- Andhra Pradesh/Telangana State Buildings (Lease, Rent And Eviction) Control Act, 1960 - Section 12

**Hon'ble Judges:** K.Surender, J

**Bench:** Single Bench

**Advocate:** K. Kiran Mayee, A Venkatesh

**Final Decision:** Dismissed

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**Judgement**

1. The appeal is filed by the appellants/complainants questioning the acquittal of the respondent for the offence under Section 138 of Negotiable

Instruments Act vide judgment in CC No.676 of 2003 dated 05.12.2007 passed by the I Additional Chief Metropolitan Magistrate, Hyderabad.

2. There are two complainants in the present case, who were tenants in the premises of the accused. The accused in the year 2000 wanted to

construct a new commercial complex and requested the appellants to surrender their tenancy rights and offered Rs.25,00,000/- as compensation for

surrendering the tenancy rights and for loss of business. For the said reason, post dated cheque for Rs.25,00,000/- was given in the name of the

appellants and also executed Ex.P1 Memorandum of Understanding. EXP2 is a further agreement amongst the appellants and the accused

respectively. Ex.P1 was entered into when cheque bearing No.557290 was issued for Rs.25.00 lakhs. Subsequently, Ex.P3 cheque was given by

cancelling Ex.P1 cheque. Ex.P3 cheque was presented thrice and it was returned under Exs.P5 and P6. Accordingly, final notice was issued on

27.05.2003. Since the payment was not made, complaint under Section 138 of the Negotiable Instruments Act was filed before the trial Court.

3. The learned Magistrate after recording the evidence of P.Ws.1 to 3 and marking Exs.P1 to P13 on behalf of the complainants and also examining

the respondent/accused as D.W.1, acquitted the accused finding that no offence was made out under Section 138 of the Negotiable Instruments Act.

The reasons stated are; i) the contract in between the complainants and the accused is invalid contract and hit by Section 23 of the Contract Act,

1872; ii) Under Section 12 of the Andhra Pradesh/Telangana State Buildings (Lease, Rent and Eviction) Control Act, 1960, any grievance between

the tenant and the owner, the proper forum would be the Rent Control Court.

4. Sri Vinod Kumar Deshpande, learned Senior Counsel appearing on behalf of Smt. K.Kiranmayee, learned counsel for appellants would submit that

the learned Magistrate has lost sight of the fact that the promise to pay an amount of Rs.25,00,000/- towards surrendering the tenancy and

compensate for the loss of business is a liability. The learned Magistrate had framed the point ie., 8(1) Whether the Cheque in dispute i.e.,

Ex.P3 was issued by the accused towards the debt or legally existing liability to the complainants?. However, ignoring the factum of liability,

and while concluding the judgment stated that there was no legally enforceable debt to attract an offence under Section 138 of the Negotiable

Instruments Act. There are two facets of Section 138 of the Negotiable Instruments Act, i.e., one is of debt and the other liability.

The learned Magistrate has found that there was no legally enforceable debt, but did not give any finding that there was no liability. The said

undertaking given by the respondent/accused to give compensation for loss of business and also for surrendering the tenancy would fall squarely

within the ambit of liability, as such, the finding of the learned Magistrate is erroneous. He further illustrates that in the event of an accident taking place, if

the person causing the accident promises money to be given to the injured and requests him not to go to the Court, it amounts to a breach of law and

the said promised amount has to be paid by the person causing the said accident. He relied upon the judgment of the Hon'ble Supreme Court in

the case of Ghurey Lal v. State of U.P. (2008) 10 SCC 450, and drawn the attention of this Court to paras 69 and 70, which prescribes the powers of

the appellate Court in deciding an order of acquittal, which reads as follows:

“69. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its

power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion

with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's

acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is

not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial

court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is

going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing

so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's

decision. "Very substantial and compelling reasons" exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the

ballistic expert, etc.

(vii) This list is intended to be illustrative, not exhaustive.

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached "one that leads to acquittal, the other to conviction" the High Courts/appellate courts must rule in

favour of the accused.

5. He further relied on the judgment in the case of Central Inland Water Transport Corporation Ltd., v. Brojo Nath Ganguly AIR 1986 Supreme Court

1571. The Court held that that Contract Act does not define the expression "public policy" or "opposed to public policy". From the very

nature of things, the expressions "public policy", "opposed to public policy", or "contrary to public policy" are incapable of precise

definition. If there is no head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with

public good and public interest declare such practice as valid. Above all, in deciding any case which may not be covered by authority, our courts have

before them the beacon of light of the Preamble to the Constitution. Lacking precedent, the court can always be guided by that light and the principles

underlying the Fundamental Rights and Directive Principles enshrined in our Constitution.

6. He relied on the judgment in the case of M.S.R. Leathers v. S. Palaniappan (2013) 1 Supreme Court Cases 177 to argue the requirements of filing a

case under Section 138 of the Negotiable Instruments Act.

7. In Basalingappa v. Mudibasappa (2019) 5 Supreme Court Cases 418, wherein any perverse findings of the trial Court if found can be interfered

with by the High Court.

8. On the other hand, the learned counsel for the respondent would submit that there should be a valid transaction between the parties which can be

redressed in a forum. Such transaction if any between the parties has to be adjudicated by the competent forum. In the present case it is the Rent

Control Court to determine regarding the quantum of amount to be given to the tenants/ Complainants. He further submits that even according to the

complainants, the complainants were still in the premises and continue to be in the premises during trial. For the said reason, even assuming that the

amount of Rs.25,00,000/- could be given as compensation, for the reason of the complainants not vacating the premises, they are not entitled for the

said amount. He relied upon the very same judgments which were considered by the trial Court in the case of Sri Krishna Khanna v. Additional

District magistrate, Kanpur AIR 1975 Supreme Court 1525 and asserted that the finding of the learned Magistrate regarding the validity and liability of

the documents under Exs.P1 and P2 should be questioned before the Rent Control Court and not by prosecuting under Section 138 of the Negotiable

Instruments Act. The other judgment relied upon is Hiten P. Dalal v. Bratindranath Banerjee 2001(2) ALD (Crl.) 234, wherein the Hon'ble

Supreme Court held that there should be subsisting liability to prosecute under Section 138 of the Negotiable Instruments Act and unless such initial

burden is discharged by the complainant to show that there is any legally enforceable debt, the burden will not shift to the accused under Section 139

of the NI Act.

9. The argument that "debt" and "liability" mentioned in section 138 NI Act are two different aspects and the learned Magistrate erred in

not considering the factum of "liability" cannot be appreciated. The word liability is not defined under Negotiable Instruments Act, as such, the

general meaning of liability has to be considered. Liability means the state of being legally responsible for something, as per the Oxford dictionary.

10. The learned Magistrate found that the enforceability under Ex.P3 cheque can only be ascertained or determined by the learned Rent Control Court

as the liability pertains to a tenant and owner. The other ground on which the learned Magistrate has acquitted was that it is not a legally valid contract

under Section 23 of the Contract Act as it is opposed to public policy. In the judgment of *Gherulal Parakh v. Mahadeodas Maiya* AIR 1959 Supreme

Court 781, it was held by the Hon'ble Supreme Court that the Courts have time and again said that where a contract does not fit into one or other

of these pigeon-holes but lies outside this charmed circle, the courts should use extreme reserve in holding a contract to be void as against public

policy, and should only do so when the contract is incontestably and on any view inimical to the public interest.

11. The complainant-P.W.1 during the course of cross-examination deposed as follows:

"I do not know whether there is no payment of compensation and surrender of possession under the rent control act. It is true I am continuing in

the one of the mulgi of the accused which was provided by the accused to me even till today. The witness volunteers that the accused till payment of

compensation to me by the accused he asked me to stay in the said mulgi."

12. Without adverting to the fact whether the amount of Rs.25,00,000/- promised by the accused is legally enforceable or liable, when the

complainants continued to stay in the mulgi till such date when they were examined in the court, the claim that the amount was towards vacating the

mulgi and loss of business, cannot be accepted. The question of being compensated for vacating the mulgi does not arise. In the said circumstances,

the appeal filed by the complainants fails.

13. Accordingly, the Criminal Appeal is dismissed. As a sequel thereto, miscellaneous applications, if any pending, shall stand closed.