

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: July 26, 2011
Delivered on: August 01, 2011

+ **CRIMINAL APPEAL No.10/2003**

LIAKAT ALI

....APPELLANT

Through: Mr. Satish Tamta, Advocate

Versus

THE STATE (GOVT. OF NCT OF DELHI) & ANR.

.....RESPONDENTS

Through: Ms. Fizani Husain, APP

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.

1. This appeal is directed against the impugned judgment dated 30.11.2002 and consequent order on sentence dated 21.12.2002 whereby the appellant was convicted in complaint case NIA No.104/2002 titled N.K. Garg Vs. Liyakat Ali for the offence under Section 138 N.I. Act and sentenced to undergo SI for the period of six months besides fine of ₹50,000/-, in default to undergo SI for the period of three months. It was also ordered that in case of realisation of the fine, the amount so recovered be paid to the complainant as compensation.

2. Briefly stated, facts relevant for the disposal of this appeal are that N.K. Garg filed a complaint under Section 138 N.I. Act and Section 420 IPC against the appellant alleging that the complainant and his brother had monetary dealings with the appellant. The appellant, in discharge of his liability, issued a cheque bearing No.697870 for ₹50,000/- drawn on Corporation Bank, Connaught Circus Branch in favour of the complainant N.K. Garg. Cheque was dated 01.08.1996. The complainant presented the cheque for realisation of amount on 05.08.1996, but it was dishonoured. The complainant contacted the appellant and on the assurance of the appellant, he again presented the cheque for encashment on 19.11.1996, but it was returned as dishonoured on 20.11.1996. The complainant served the appellant with demand notice under Section 138 N.I. Act calling upon him to pay the cheque amount, but the appellant failed to comply with the demand notice. This led to filing of the complaint.

3. The appellant was served with notice under Section 251 Cr.P.C. for the offence under Section 138 N.I. Act. He pleaded not guilty and claimed trial.

4. In support of the allegations in the complaint, the complainant examined his attorney as CW1. He fully supported the allegations in the complainant. Besides the attorney, complainant also examined Shri R.S. Goswami, Advocate (CW2) and Shri D.K. Popli, PRI, Post Office Krishna Nagar (CW3) and Shri Hanuman Prasad Verma, (CW4) clerk-cum-cashier of Punjab National Bank, Yamuna Vihar, Delhi to prove the issue and

service of demand notice on the appellant as also the dishonour of the cheque.

5. The appellant in his statement under Section 313 Cr.P.C. denied the prosecution version. He claimed that he was never served with the notice of demand. The appellant explained that he had business dealings with the complainant. The cheque in question was issued as security for the purchase of cloth from the complainant. The complainant, however, failed to supply the cloth to him. Thereafter, some disputes arose and the complainant has misused the cheque in question.

6. Learned trial Judge on consideration of the evidence on record came to the conclusion that the respondent complainant has proved the allegations in the complaint and found the appellant guilty of offence under Section 138 N.I. Act. He accordingly convicted and sentenced the appellant.

7. Learned Shri Satish Tamta, Advocate appearing for the appellant submits that the learned Additional Sessions Judge has committed a grave error in holding the appellant guilty for the offence under Section 138 N.I. Act ignoring the fact that the complainant has not been able to establish that the cheque, which is subject matter of the complaint, was issued in discharge of an existing liability or a valid debt. Learned counsel argued that the learned trial court has relied upon the testimony of the complainant N.K. Garg(CW1) ignoring the fact that his testimony is not worthy of credence and it is not supported by any corroborative evidence, oral or documentary. Thus, it is strongly urged that the appeal be

accepted and the appellant be acquitted of charge under Section 138 N.I. Act.

8. I am not convinced with the submissions made by learned counsel for the appellant. No doubt, in order to succeed in a complaint under Section 138 N.I. Act, the complainant is required to establish that the cheque in question was issued by the appellant in favour of the complainant in discharge of existing liability or debt. In order to provide a foundation for this, N.K. Garg appeared as CW1 and he has stated that he had business dealings with the appellant Liakat Ali who had given him the cheque in question i.e. cheque No.697870 dated 01.08.1996 for ₹50,000/- drawn on Corporation Bank. In the cross-examination N.K. Garg has clarified that the appellant took cash loan from him and against that loan he had issued the cheque. From this it is evident that the cheque was issued for discharge of the loan taken by the appellant.

9. Section 139 of the Negotiable Instruments Act reads thus:

“It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, or any debt or other liability.”

10. On reading of aforesaid Section, it is apparent that once a cheque has been issued by the accused, it shall be presumed, unless the contrary is proved by the accused that the holder of the cheque received the cheque of the nature referred to in Section 138 N.I. Act. It is not disputed that the cheque in question was issued by the appellant in favour of the

complainant. Rather, the appellant in his statement under Section 313 Cr.P.C. has admitted to issue of cheque by taking a defence that the cheque in question was issued as security. Even in his statement also, he has admitted having issued the cheque, but his defence is that he had issued the cheque against supply of cloth which was found to be defective. Thus, it is established that the cheque in question was actually issued by the appellant in favour of the complainant. This gives rise to a presumption under Section 139 N.I. Act that the cheque was given for discharge of the existing liability. To rebut this presumption, appellant Liakat Ali appeared as DW2 and stated that he had issued the cheque for purchase of cloth but the cloths supplied by the complainant were found defective, as such the cloth was returned and complainant was asked to return the cheque. The complainant, instead of returning the cheque, presented it in the bank. Aforesaid evidence of the appellant is contrary to the explanation given by him in his statement under Section 313 Cr.P.C. wherein he has stated that he gave the cheque to the complainant as security in advance for the purchase of cloth. Even while cross-examining the complainant, the appellant suggested a totally inconsistent defence wherein he took the plea that the cheque in question was not issued by the appellant. From the above, it is evident that the appellant has been taking inconsistent defences at various stages of the trial. Therefore, his version as DW2 appears to be an afterthought and not worthy of credence. Thus, it is clear that the appellant has not been able to discharge the onus to rebut the presumption under Section 139, N.I.Act.

11. In view of the above, I find that the learned trial Judge has rightly convicted and sentenced the appellant for the offence punishable under Section 138 N.I. Act and there is no reason to interfere with the impugned judgment and order on sentence in appeal.

12. Appeal is accordingly dismissed.

(AJIT BHARIHOKE)
JUDGE

AUGUST 01, 2011
pst