

GAHC010195042022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./482/2022

Md. Matibur Rahman,
S/o Md. Abdul Matlib
R/o Village - Satlonga,
P.S. – Kachua, District- Nagaon,
Assam, Pin-782126.

...Petitioner.

Versus

Pintu Ghosh,
S/o Late P.C. Ghosh,
R/o Ssarada Ashram Path,
Silpukhuri, P.S. – Chandmari,
District- Kamrup (M) Pin-781003.

.....Respondent.

BEFORE

HON'BLE MRS. JUSTICE MALASRI NANDI

For the Petitioner : Mr. S. Nawaz. Advocate.

For the respondent : Mr. K. Bhattacharjee Advocate.

Date of hearing : 13.06.2023
Date of judgment : 10.08.2023

JUDGMENT AND ORDER (CAV)

Heard Mr. S. Nawaz, learned counsel for the petitioner. Also heard Mr. K. Bhattacharjee, learned counsel for the respondent.

2. The respondent as complainant filed a complaint case under Section 138 of Negotiable Instrument Act (hereinafter referred to as "N.I. Act") against the petitioner in connection with dishonour of Cheque bearing No.084407 dated 06.07.2017. The learned Trial Court vide judgment dated 20.01.2021 convicted the petitioner under Section 138 of N.I. Act and sentenced him to undergo 1 (one) year rigorous imprisonment and to pay Rs.38,00,000/- (Rupees thirty eight lakh) as compensation, in default of payment of compensation to undergo simple imprisonment for another 2 (two) months.

3. The petitioner preferred an appeal against his conviction and sentence. However, vide judgment dated 12.08.2022, the learned Additional Sessions Judge No.2, Kamrup(M) confirmed the judgment of conviction. The learned First Appellate Court modified the sentence to 6 (six) months rigorous imprisonment instead of one year as imposed by the learned Trial Court. The quantum of compensation would remain as.

4. The case of the petitioner is that in the year 2015 the petitioner hired one JCB and 2 numbers of dumpers from the respondent. The rate of fare for the JCB was Rs.700/- per hour and the rate of fare for each dumber was Rs.500/-

per hour. In this regard, the petitioner paid the respondent Rs.1,00,000/- as advance. An agreement was executed accordingly. Around 1½ years later, the respondent executed another agreement with the petitioner. The petitioner trusting the word of the respondent for its contents, signed the agreement. In 2016, the respondent claimed that there had been some discrepancies in the payment. According to the petitioner, he had been making the payment regularly. The respondent asked the petitioner to make further payments by way of cheque. The petitioner accordingly obtained a Cheque Book for doing so. A few days later, the respondent told the petitioner that his brick business had shut down and he was facing financial woes. On the request of the respondent, the petitioner gave him 5 signed blank cheques to use as collateral. Thereafter in the year 2017, the petitioner on account of ill health and financial crises decided to return the vehicles which he received earlier. The petitioner asked the respondent for his account book so that he could clear his pending dues. As per the petitioner, the total fare had come to Rs.51,92,845/- out of which he had already paid around Rs.50,74,000/-. After making necessary adjustments, the balance came to Rs.1,18,202/-. The petitioner asked the respondent to deduct the advance payment of Rs.1,00,000/- from the balance amount and receive Rs.18,202/- from him.

5. It is further stated that the respondent kept in delaying the receipt of the payment. On the contrary, the respondent filed an FIR against the petitioner. The respondent also deposited one of the cheques i.e. Cheque No.084407 for encashment by filling it up by himself. The cheque got dishonoured on account of insufficiency of funds. Realising the ill motive of the respondent, the petitioner filed an FIR against the respondent for misusing his cheques. The said FIR was registered as Kachua P.S. Case No.229/2017 under Sections 420/406

IPC. The petitioner also wrote to his Bank Manager to stop payment what he had given to the respondent. But in the meantime, the respondent filed the complaint against the petitioner under Section 138 of N.I. Act.

6. The learned counsel for the petitioner has argued that the learned Trial Court and the First Appellant Court failed to appreciate the fact that the petitioner had no subsisting debt or liability against the respondent, who misused a cheque issued to him by the petitioner. The fact that no debt or liability is existed at the time of submission of the cheque was manifest from the evidence on record. It is also submitted that the cheque was dishonestly filled up by the respondent and the learned Trial Court erred in appreciating the fact that the amount entered into by the respondent cannot be presumed to be the actual amount of the petitioner's liability.

7. It is also the submission of the learned counsel for the petitioner that the learned Courts below committed gross illegality in failing to appreciate the fact that the petitioner had been able to prove the presumption under Section 139 of the N.I. Act. On the contrary, after rebuttal of the same, the respondent failed to shoulder onus that had shifted to him to prove that the cheque in question was issued in discharge of a legally enforceable debt or liability. In support of his submission, the learned counsel has relied upon on the following case laws :

- (i) *AIR 2006 SC 3366 (M.S. Narayana Menon vs. State of Kerala & Others.*
- (ii) *AIR 2016 SC 4363 (Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited)*
- (iii) *(2010) 11 SCC 441 (Rangappa vs. Sri Mohan).*

8. Per contra, the learned counsel for the respondent submitted that the issue of cheque and its handing over though stated to be blank form with signature alone towards the business transaction with the complainant, is not a matter in dispute. It is urged by the learned counsel for the respondent that on the facts so presented, the complainant is entitled to succeed even on the presumption covered under Section 118 and 139 of the N.I. Act. The evidence on behalf of the complainant through PW-1 has been found to be trustworthy by both the Courts below and it is more than sufficient to prove the case of the complainant that the accused has committed the offence under Section 138 of the N.I. Act. Therefore, the conviction imposed against the accused which is fully supported by the legal evidence tendered is not liable to be interfered with in exercise of revisional jurisdiction of this Court. In support of his submission, the learned counsel has placed reliance on the following case law :

- (i) *Criminal Appeal No.123/2021 (arising out of Special Leave Petition (Crl.) No.1876/2018.*
- (ii) *AIR 2019 SC 2956 (Surinder Singh Deswal @ Col. S.S. Deswal & Others vs. Virender Gandhi).*
- (iii) *2019 4 (Crimes (SC) 149 (Bir Singh vs. Mukesh Kumar).*

9. I have considered the submissions of the learned counsel for the parties.

10. Needless to point out, in exercise of revisional jurisdiction, this Court is not expected to re-appreciate the evidence on record as a matter of course. Such a course is permissible only whether it is shown the finding entered into by

the inferior Court is so perverse in the sense that such a view could not have been taken on the records available in the case. Even if two different views are permissible on the materials tendered in the case, so long as the view taken by the inferior Court is also one which could be legitimately drawn, it is not open to the Revisional Court to disturb that finding whatever be the probative value of the second view permissible on such materials. Such being the position of law and also interdiction in exercise of revisoinal jurisdiction, I find the challenges raised by the accused petitioner to impeach his conviction rendered by the learned Trial Court and confirmed by the First Appellate Court hardly merit for consideration. On hearing the learned counsel for the parties, on perusal of the evidence of all the witnesses and the documents available in the records, I find that no scope for interference in the orders passed by the learned Trial Court and the First Appellate Court.

11. The complainant examined as PW-1 has given definite evidence proving the transaction and also proving the issuance of cheque vide Exbt.-1. The evidence given by the complainant stands not discredited in any manner. He is definite in evidence that the cheque was issued by the accused in discharge of the legally enforceable debt. The other documents like Exbt.-2 and Exbt.-3 proved that the cheque was bounced due to insufficiency of funds. The revision petitioner has no case that he had sufficient funds in his account to honour the cheque vide Exbt.-1 or that the cheque was bounced on some other ground. The petitioner has also no explanation why he did not send reply to the statutory notice sent by the complainant for payment of his dues.

12. I find that the revision petitioner does not have any definite defence in this case. It appears that his defence is only that he issued the cheque in favour

of the respondent as "security" and the respondent misused the said cheque by filling up of his own. It is a settled position of law that cheque given as "security" can be enforced under the law on failure to make payment of the amount borrowed. The revision petitioner has practically admitted the cheque vide Exbt.-1 including his signature therein. The evidence given by the complainant stands not discredited during cross-examination made by the petitioner. Under such facts, the complainant is entitled for the benefit of the statutory presumption under Section 139 of the N.I. Act. This presumption stands not in any manner rebutted by the revision petitioner. Compliance of all statutory formalities stands proved by the complainant/respondent. I find that the Exbt.-1 cheque was issued by the revision petitioner/accused in discharge of a legally enforceable debt or liability and the cheque was bounced due to insufficiency of funds. The petitioner admittedly did not make payment of the said amount in spite of receipt of the statutory notice. Thus, the offence punishable under Section 138 of N.I. Act stands well proved in this case.

13. In the result, the revision petition is dismissed. The petitioner is directed to surrender before the learned Trial Court to serve out the sentence and for payment of compensation of Rs.38,00,000/- as per order of the learned Trial Court.

Send down the LCR.

JUDGE

Comparing Assistant