

GAHC010204642016



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

Case No. : Crl.A./149/2016

SRI PUTUL PHUKAN
S/O LT. DURGESWAR PHUKAN, R/O BORDOLONI KALITA GAON, P.S.
GOGAMUKH, DIST. DHEMAJI, ASSAM, PIN 787026

VERSUS

THE STATE OF ASSAM and 2 ORS

2:PRANJAL DAS

S/O SRI DURNA KANTA DAS
PERMANENT ADDRESS. R/O BAHPARA
P.S. DHAKUAKHANA
DIST. LAKHIMPUR
ASSAM
PIN 787055 PRESENT ADDRESS SECY. OF MAJULI SAMABAI SAMITY LTD.
P.O. MAJULI
DIST. JORHAT
ASSAM
PIN 785001

3:MAHABIR BORDOLOI
S/O LATE LUHAI BORDOLOI
R/O BORDOLONI BAMCHENIA DEORI GAON
P.S. GOGAMUKH
DIST. DHEMAJI
ASSAM
PIN 78702

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : MRM P GOSWAMIR- 2and3

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGEMENT AND ORDER (CAV)

Date : 26-04-2023

Heard Mr. M.A. Sheikh, learned counsel for the accused-appellant. Also heard Ms. U. Baruah, learned Senior counsel for the respondent Nos. 2 and 3 and Mr. R.J. Baruah, learned Additional Public Prosecutor for the State/respondent No.1.

2. This appeal has been preferred by the complainant as appellant against the impugned judgment and order dated 03/03/2016 passed by the learned Additional Chief Judicial Magistrate Dhemaji, Assam in connection with N.I. case no 12/2014 whereby the respondent Nos. 2 and 3 as accused were acquitted from the charge u/s 138 of Negotiable Instrument Act, 1881 (hereinafter, in short N.I. Act).

3. The case of the complainant is that the complainant is a businessman by profession and permanently resided at Bordoloni Kalita Gaon under Gogamukh Police station in the District of Dhemaji. The accused No. 1 i.e., Pranjal Das was the Secretary of Bordoloni Samabai Samittee and accused No. 2 Mahabir Bordeori was the Chairman of the said Samittee. Both the accused persons borrowed Rs. 4,20,893/- (Rupees Four Lakh Twenty Thousand Eight Hundred Ninety Three) on 02/04/2014 for the purpose of lifting rice and atta in the name of said Samabai Samittee. The accused persons also promised to repay the borrowed amount within two months along with some amount of profit obtained by selling rice and atta to the agents of the said Samabai Samittee.

4. It is further alleged that both the accused persons delivered a cheque for an amount of Rs. 4,20,893/- to the complainant vide cheque bearing No. 411258 which was signed by both the accused persons as Secretary and President of said the Samabai Samittee.

5. The said cheque was presented by the complainant before the UCO bank of Bordoloni Branch in the account of the complainant. The same has been dishonoured with an endorsement "*funds insufficient*". The complainant has received a cheque return memo on 04/06/2014. Then the complainant informed orally to the accused persons about the dishonour of the said cheque but the accused persons did not pay any attention on his verbal information. Finding no other alternative, the complainant sent advocate's notice on 17/06/2014 u/s 138 N.I. Act, requesting the accused persons to make payment of the cheque amount to the complainant within 15 days after receipt of the notice. In spite of receipt of notice by both the accused persons, the cheque amount has not been paid to the complainant. Thereafter, the complainant filed a complaint against both the accused persons before the court of Learned CJM, Dhemaji for prosecution.

6. On receipt of the complaint, the learned CJM, Dhemaji registered a case and forwarded the case to the file of Additional CJM, Dhemaji for disposal. Learned Magistrate took cognizance of the offence u/s 138 of N.I. Act and issued summons to the accused persons accordingly. In due course the accused persons appeared before the Trial court to face the trial. Subsequently offence was explained to the accused persons to which they pleaded not guilty and claimed to be tried.

7. During trial, the complainant examined three witnesses including himself. On the other hand, the accused persons did not adduce any evidence in support of their case. After completion of trial, the statements of the accused persons were recorded u/s 313 Cr.P.C. to which they denied the incriminating materials available in the evidence of the witnesses and pleaded innocence. Both the accused persons stated in their statement recorded u/s 313 Cr.P.C. that they immediately paid the amount to the complainant but the complainant did not return them the cheque which was in his custody and with the said cheque he lodged this false case. By selling the rice they paid Rs. 1,10,000/- to the complainant and they paid another cheque of Rs. 3, 03000/- which he had already encashed. No amount was due to the complainant. It is also stated by the accused persons in their statement u/s 313 Cr.P.C. that they have paid the entire loan amount to the complainant.

8. After hearing the arguments advanced by the learned counsel for the parties, the learned trial court delivered the judgment of acquittal against the accused persons. The trial court finally found that the accused persons had succeeded in probalising their case that the cheque in question was issued as a security and further found that the complainant has failed in proving that the cheque was issued by the accused persons for a legally enforceable debt. Consequently, found that the accused persons are not guilty for the offence u/s 138 N.I. Act and accordingly both the accused persons were acquitted. Challenging the above finding and the order of acquittal the complainant has preferred this appeal.

9. Learned counsel for the appellant has submitted that the finding of the trial court that the accused persons have succeeded in probalising their case factually and legally as incorrect. It is also the submission of the learned counsel for the appellant that in view of Sections 118 and 113 of the N.I. Act, the appellant/complainant is entitled to get statutory presumption and as long as the accused persons had failed to prove the contrary, the trial court was wrong in not extending the said benefit in favour of the complainant. According to the learned counsel for the appellant, the trial court has miserably failed to appreciate the evidence and materials on record in its true perspective. It is submitted that the trial court fails to discuss the evidence of the witnesses but the appellant by adducing sufficient evidences through three witnesses has successfully proved his case before the trial Magistrate. But the learned trial court has failed to consider the same and acquitted the accused persons and which appears to be perverse.

10. In support of his submissions learned counsel has placed reliance on the following case laws –

(i) (2016) 10 SCC 458 (Sampelly Satynarayana Rao vs. Indian Renewable Energy Development Agency Limited)

(ii) (2010) 11 SCC 441 (Rangappa vs. Sri Mohan).

11. On the other hand, learned counsel for the respondent has argued that the complainant has miserably failed to prove his case against the accused persons beyond reasonable doubt and the trial court is fully justified in its finding that the accused persons have succeeded in probalising their case that the cheque in question was issued as a security. According to the learned counsel for the respondent, there was no illegality or perversity in the findings of the trial court. Therefore, this court will not be justified in interfering with the order of acquittal recorded by the trial court in favour of the accused persons.

12. In support of his submissions, learned counsel for the respondent has relied on the following case law –

(i) 2006) 6 SCC 39 (M.S. Narayana Menon Alias Mani vs. State of Kerala and another)

13. I have considered the arguments advanced by the learned counsel for the appellant and the respondent and I have also perused the judgment of the trial court as well as the evidence and materials on record.

14. In the light of the rival contentions and the evidence and the materials on record the question to be considered is whether the trial court was justified in its finding by acquitting the accused persons u/s 138 of N.I. Act and the further question to be considered whether the appellant has succeeded in substantiating his challenge against the findings of the trial court and made out any ground to interfere by this court with the order of acquittal rendered in favour of the accused persons.

15. The case of the complainant is that the accused persons borrowed a sum of Rs. 4,20,893/- with a promise to repay the said amount within two months. Subsequently, both the accused issued a cheque, which he presented before the bank and which was dishonoured. Whereas the case of the accused persons is that they took a loan of the said amount and one cheque was issued in favour of the complainant as security on the same

date. Subsequently, they have paid the full loan amount to the complainant but the complainant did not return back the said cheque and it was the said cheque which was misused by the complainant for the purpose of the present complaint.

16. To prove the allegation of the complainant, the only evidence is that of the interested version of the complainant and P.W. 2 who is the employee under the complainant. The documents submitted by the complainant i.e., exhibit 1 is the cheque in question, exhibit 2 is the dishonour memo and the exhibit 3 is the acknowledgment receipts. Though I have repeatedly gone through the complaint, there is no whisper in the complaint as to how and why such a huge amount was given to the accused persons without securing any document or any security. No any agreement is available in the record executing between the parties for transaction of money. It is also not stated in the complaint petition or affidavit as to whether any security or document was obtained by the complainant connected with the said transaction. So, from the averments in the complaint and the evidence of the complainant and his witnesses, it can be seen that to prove the transaction as claimed by the complainant there is no documentary evidence or any independent source of evidence.

17. It is in the above back drop and the drawbacks of the case of the complainant, the defence case has to be examined. According to the accused persons, they have borrowed the money from the complainant and they have issued a cheque for the said loan as security but subsequently they have paid the loan amount to the complainant and no liability is due to the complainant. The complainant did not return the said cheque and misused the said cheque in the present case. In this juncture, it is relevant to note that in his statement recorded u/s 200 Cr.P.C. before the magistrate, the complainant admitted that due to financial problem the accused persons were unable to purchase rice and atta from Statefed and asked him to give a loan of Rs. 4,20,893/- on 02/04/2014. Earlier occasion also he had given them loan and they had returned the same. On 02/04/2014 they had issued him a cheque in the account of Samabai Samittee UCO bank, Bordoloni Branch as security and asked him to realise the amount after two months. From the admission of the complainant in his statements before the Magistrate that the cheque was issued as security for payment of loan and as such it is

unbelievable that when the complainant demanded the amount the accused persons issued a post dated cheque. From exhibit 1, it reveals that on 02/04/2014, the cheque was issued by the accused persons in favour of the complainant and it also reveals that the amount of loan was handed over to the accused persons on the same date.

18. It is in the light of the aforesaid factual matrix and the evidence, the learned Magistrate held that the accused persons have succeeded in probalising their case that the cheque in question was issued as a security. In the absence of sufficient pleading and evidence with respect to the transaction claimed by the complainant and because of the discrepancies and contradictions in the evidence of the complainant, it cannot be said that the complainant had succeeded in proving his case against the accused persons beyond reasonable doubt.

19. In the case of *Sudhir Kumar Bhalla vs. Jagdish Chand and others*, reported in *AIR 2008 SC 2407*, the Hon'ble Apex court has held that –

“The criminal liabilities u/s 138 of the NI Act are attracted only on account of dishonour of the cheques issued in discharge of liabilities or debt but not on account of issuance of security cheques.”

20. Hon'ble Apex court in a decision reported in *Pudhu Raja and another vs. State Represented by Inspector of Police* reported in *(2013) 1 SCC (Cri) 430* has held that –

“The appellate court can interfere only in exceptional cases where there are compelling circumstances and the judgment in appeal is found to be perverse. The appellate Court should bear in mind the presumption of innocence of the accused and further that the trial court's order of acquittal bolsters the presumption of innocence.”

21. In the case of *State of Rajasthan vs. Darshan Singh alias Darshan Lal* reported in *(2012) 4 Supreme 72*, the apex court has held that the jurisdiction of the appellate court to

interfere with the order of acquittal is very limited. The Apex court has held –

“In exceptional cases where there are compelling circumstances and the judgment under the appeal is found to be perverse the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of accused and further that the trial court’s acquittal bolsters the presumption of his innocence.”

22. In view of the above discussions, going by the judgment of the trial court and the evidence and materials on record, it can be seen that the findings of the trial court are on the basis of the evidence and materials available on record and there is no perversity in the findings and judgments of the trial court. Thus, on examination of facts and circumstances involved in the case, especially in the light of the dictum laid down in the aforesaid decisions, this court finds that the appellant has miserably failed to show any exceptional circumstance to interfere by this court with the order of acquittal or to show the judgment of the trial court is perverse or illegal.

23. Therefore, I find no merit in the appeal. In the result appeal is dismissed.

24. Send down the LCR.

JUDGE

Comparing Assistant