

Court No. - 82

Case :- APPLICATION U/S 378 No. - 173 of 2023

Applicant :- Abhishek Yadav

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Abhishek Yadav, Rajeev Pandey, Tulsi Singh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. Acquittal of accused-opposite party no. 2 Rinku was recorded by the court of Additional Civil Judge (Junior Division) Judicial Magistrate, Court No. 10, Allahabad in Criminal Complaint Case No. 436 of 2022, under Section 138 of Negotiable Instruments Act, Police Station Cantt, District Allahabad vide judgment and order dated 17.10.2023, feeling aggrieved of which the present application for grant of special leave to appeal has been filed by the present appellant-complainant Abhishek Yadav.

2. Heard learned counsel for the appellant-complainant and learned A.G.A. for the State.

3. The brief facts as narrated in the complaint are hereinunder:-

4. The complainant is an advocate and on persuasion of accused No. 1 Rinku who was working in collusion of accused No. 2 Ashok Kumar and accused No. 3 Gulam Mohammad transferred some money through R.T.G.S. to the bank account of accused No. 1 Rinku for purchase of a plot on 25.01.2022. Subsequently on different occasions Rs. two lacs were also paid by the complainant through his bank account and some handsome amount was also given to accused No. 1 Rinku in cash. When the registry of the plot was not performed, on demand of the complainant to return his money, all the accused persons gave a cheque amounting to Rs. three lacs in respect of bank account of accused No. 1 Rinku dated 25.01.2022 on 4.03.2022 and expressed their inability to execute the sale deed due to some legal technicalities. The said cheque was dishonoured twice by bank on 07.03.2022 and 09.03.2022 respectively as the payment from the said account was stopped by the accused persons. A demand notice dated 11.03.2022 was issued by the complainant to the accused persons whereupon they admitted their fault and a new cheque bearing Rs. three lacs dated

25.03.2022 was also given by them to the complainant but the said cheque was also dishonoured by the bank on 29.03.2022 because the payment was stopped by drawer. A fresh registered notice dated 01.04.2022 was again issued by the complainant to the accused No. 1 Rinku which was returned back on 07.04.2022 as not served whereas notices sent to accused Nos. 2 and 3 were served upon them. Ultimately a complaint under Section 138 of Negotiable Instruments Act and Sections 419, 420, 406 and 506 I.P.C. was preferred by the appellant-complainant before the court.

5. The learned trial court proceeded to summon the accused No. 1 Rinku to face trial under Section 138 of Negotiable Instruments Act.

6. After completing legal and procedural formalities accused Rinku was summoned by the court under Section 138 of Negotiable Instruments Act and his statement was recorded before the Court. He denied the allegations made in the complaint and refused to issue any cheque in favour of any person.

7. The accused Rinku was also examined as DW-1 before the Court.

8. The learned trial court after considering the evidence on record meticulously discussed every aspect relating to the matter and ultimately accused Rinku was acquitted vide impugned judgment and order.

9. Learned counsel for the appellant-complainant submitted that the impugned judgment and order acquitting the accused-opposite party is completely illegal and has been passed without proper appreciation of evidence on record. It is further submitted that the appellant-complainant has proved his case on the basis of cogent documentary and oral evidence and all the incriminating materials viz impugned cheque, notice and other relevant documents produced before the learned trial court and he himself proved his case as PW-1. Learned trial court totally misread the evidence on record. The observation of the learned trial court that the impugned cheque was not issued for discharge of legally enforceable debt is totally wrong and perverse. The agreement between the parties for sale/purchase of the land was never denied from the other side. The essential conditions enumerated under Section 138 of Negotiable Instruments Act and other relevant provisions of the said Act were fulfilled by the appellant-complainant but the learned trial court in an arbitrary and illegal manner discarded the same. Another finding of the court to the effect that since an F.I.R.

under Sections 419, 420, 406, 506 I.P.C. as Case Crime No. 54 of 2022, Police Station Cantt. District Allahabad is already pending, the present complaint on the same allegations is not maintainable, is also against the legal norms. On the aforesaid reasons, application for special leave to file criminal appeal in this matter has been prayed for.

10. Per contra, learned A.G.A. opposed the application for special leave to appeal and it has been submitted that no offence was made out against the accused. If the appellant-complainant's evidence is taken into entirely, the reliability of PW-1, the complainant himself stands shattered during his cross-examination and the learned trial court committed no error while appreciating the evidence rendered by the appellant-complainant as well as the defence and the material contradictions occurred in the evidence of PW-1 have been emphasized by the learned A.G.A.

11. Since it is an appeal against the acquittal, it will be relevant to note the principles of law laid down by the Apex Court with regard to the appreciation of evidence in the appeal against the acquittal. Recently in ***Mallappa v. State of Karnataka, 2024 SCC OnLine SC 130***, the Apex Court has held as under:-

"37. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarized as:

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive - inclusive of all evidence, oral or documentary;

(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate Court is inclined to reverse the acquittal in

appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."

12. In the case of ***Bannareddy v. State of Karnataka, (2018) 5 SCC 790***, the Hon'ble Apex Court has considered the power and jurisdiction of the High Court while interfering in an appeal against acquittal and it has been held that "the High Court should not have re-appreciated the evidence in its entirety, especially when there existed no grave infirmity in the findings of the trial Court. There exists no justification behind setting aside the order of acquittal passed by the trial Court, especially when the prosecution case suffers from several contradictions and infirmities".

13. In the light of the submissions made by learned counsel for the appellant-complainant, I have carefully gone through the evidence available on record, analysis and appreciation thereof and conclusion arrived at by the trial court in the impugned judgment and order dated 17.10.2023.

14. The main issue to be ascertained in this appeal is as to whether the impugned judgment is so perverse and against the evidence on record that the appellant-complainant should be given opportunity to challenge the same by way of filing an appeal.

15. The learned trial court after analysing the entire oral and documentary evidence on record found that the complainant failed to prove its case beyond reasonable doubt and extending benefit of doubt to the accused recorded his acquittal in this case.

16. A perusal of the impugned judgment reveals that the trial; court recorded acquittal of the accused Rinku after appreciating the evidence and facts and circumstances of the case.

17. The learned trial court formed certain points of determination which has been mentioned in the impugned judgment. It was also found in the impugned judgment that the accused made certain statements under Section 315 Cr.P.C. and on the basis of the admission of the accused statutory presumptions under Section 118(a) and 139 N. I. Act would be raised in favour of the applicant-complainant regarding which cheque has been drawn for

consideration and issued by accused in discharge of legally enforceable debt or other liability. This is what referred by learned trial court. Learned trial court however concluded that if the complainant is able to prove that a cheque has been issued by accused then presumption will be drawn in favour of the complainant and it was the duty of the accused to adduce evidence rebutting the same. In the case in hand the accused himself himself has accepted in his statement under Section 313 Cr.P.C. and in his evidence as well that he had given a signed blank cheque to the complainant and burden is on the accused to prove that at the time of presentation of cheque in the bank legally enforceable debt did not exist adverse to him and in these circumstances, the presumption under Section 118(a) and 139 N.I.Act is in favour of the complainant. Although the parties have made rival submissions in this matter whereas in one place the complainant comes forward with a specific case that both the sides had been under negotiation of purchase of some plots. The complaint paid some consideration amount through R.T.G.S. to the bank account of the accused Rinku and subsequently some cash money was also paid by him and when the registry was not performed the complainant asked to return his money where upon a cheque was given to him in respect of bank account of the accused Rinku which was dishonoured on 29.03.2022 following registered notice dated 01.04.2022 of accused No. 1 Rinku and other accused persons as well. Notice sent to accused No. 1 was not served whereas the accused Nos. 2 and 3 were served.

18. It is pertinent to mention here that apart from present complaint under Section 138 of N.I. Act PW-1 complainant in his statement affirmed the aforesaid facts and reiterated that the cheque given by the accused to him was outcome of the agreement between the parties for the sale of some land. It is also noteworthy that the Magistrate while passing the impugned judgment held that the accused Rinku is only the accused in this case. On the other hand, the evidence of the accused-opposite party is that he had borrowed some money from the complainant on interest and he also paid Rs. 20,000/- as interest to the complainant. The complainant also took Rs. 2 lacs cash from him and subsequently threatened him to pay the whole amount which is very excessive in view of the loan taken by accused from the complainant.

19. A perusal of the record reveals that the complainant himself admits that no right up was prepared in respect of admission of advanced money on the part of the complainant for the purchase of land. He has further admitted that amount which was paid by him

to the accused for the purchase of land was not mentioned by him in his Income Tax Return of the particular year. He also admits that a criminal case No. 54 of 2022, under Sections 419, 420, 406, 506 I.P.C., Police Station Cantt., District Allahabad is pending in the court. On the other hand, the accused himself failed to produce any documentary evidence in respect of borrowed money by the accused from the complainant.

20. The learned trial court elaborately discussed the evidence on record and statements made by both the sides. It reached the logical conclusion that a write up was must in the form of agreement between the parties in respect of sale of some plots by the complainant and since this point was not proved by prosecution and no registered agreement to sell was filed by the complainant, this Court finds no reason to pass any order in favour of the complainant.

21. Although Section 118(a) makes provision upon some presumption and states "*that until the contrary is proved, it shall be presumed that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration*".

22. PW-1 the complainant admits that the accused had signed a blank cheque and amount was filled by the complainant. From perusal of the record it also appears that the amount of loan allegedly given by the complainant to the accused had not been mentioned by him in his Income Tax Return. Since it was a huge amount, the learned trial court did not consider it as a natural and probable act and that was also a reason for dismissal of the complainant.

23. Learned counsel for the complainant has vehemently argued that the provisions under Section 138 N.I. Act are proved in this case. The cheque issued by the accused was dishonoured by the bank, legal notice was given within time to the accused-opposite party and all the primary conditions to make the provisions of Section 138 N.I. Act were effective and all the procedures were sufficiently shown and proved by the complainant.

24. The learned trial court has taken into account all the conditions and found itself in consonance with the concerned Magistrate. The learned trial court has also discussed some relevant laws promulgated by the Hon'ble Apex Court and on the basis of evidence on record prevailing in the circumstances of the case, it

rightly concluded that there is no legally enforceable debt in favour of the complainant. The learned trial court further held that merely by issuing the cheque and dishonour of the same cannot be a proof for successful disposal of a case under Section 138 N.I. Act. The accused has taken a specific plea that although the accused had issued one blank cheque in favour of the complainant but at the same time he states that there was no agreement to sell with regard to purchase of land and accused was not involved in the business of sale of land.

25. On the basis of aforesaid discussions, the learned trial court reached at the conclusion that the complainant had to establish that the said cheque was given as discharge of legally enforceable debt but on account of his failure to show any agreement registered or unregistered in respect of sale of land, the accused is entitled for benefit of doubt which was not proved by cogent evidence that the impugned cheque was given by the accused-opposite as legally enforceable debt. Hence, I find no reason to interfere in the impugned judgment and order dated 17.10.2022. It is not a case where any presumption might arise in favour of the complainant.

26. In the facts and circumstances of the case and also keeping in view the case law cited on behalf of the complainant, I do not find any perversity or illegality in the impugned judgment dated 17.10.2022, therefore, the findings of acquittal recorded by the learned trial court is hereby affirmed.

27. Accordingly, this Application U/S 378 Cr.P.C. is hereby **dismissed**.

28. Let the record of this case be sent back to the learned trial court concerned for necessary compliance.

Order Date :- 27.11.2024

Rmk.