

Court No. - 27

Case :- CRIMINAL REVISION No. - 104 of 2024

Revisionist :- Ravindra Kumar Yadav

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And
Another

Counsel for Revisionist :- Mohammad Ayub,Irshad Ali

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Mohammad Ayub, the learned counsel appearing for the revisionist, and Sri Gyanendra Singh, the learned Additional Government Advocate and Sri Dharmendra Gupta, the learned counsel for the opposite party No.2 and perused the record.
2. By means of the instant revision filed under Section 397/401 Cr.P.C., the revisionist has assailed validity of the judgment and order dated 07.04.2021 passed by the Presiding Officer, Additional Court No.3, Lucknow in Complaint No.7097 of 2017 filed by the opposite party No.2 under Section 138 of the Negotiable Instruments Act, Police Station Talkatora, Lucknow, convicting the revisionist for offence under Section 138 of the Negotiable Instruments Act and sentencing him to undergo simple imprisonment for 2 years and pay Rs.45 Lakh as fine, and to undergo simple imprisonment for a further period of one and half years in case of his failure to pay fine. A sum of Rs.38 Lakh out of the amount of fine will be paid to the complainant as damages.
3. The revisionist has filed Criminal Appeal No.165 of 2021 against the aforesaid order, which has been dismissed by means of the judgment and order dated 16.01.2024 passed by III Additional Sessions Judge, Lucknow and the order dated 07.04.2021 passed by the trial court has been affirmed and the

revisionist was directed to surrender before the trial court on 07.02.2024 to undergo the sentence.

4. The learned counsel for the revisionist has submitted that the revisionist had taken a sum of Rs.30 Lakh as loan from the opposite party No.2. He paid Rs.3.3 Lakh monthly to the opposite party No.2 with effect from 15.03.2017 till 30.07.2017. The account statement annexed with the revision indicates that on 05.09.2017 the revisionist had paid Rs.25.55 Lakh to the opposite party No.2 and the same amount was paid by him again on 25.09.2023. The learned counsel for the revisionist has submitted that the revisionist has paid a substantial amount to the opposite party No.2. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **Dashrathbhai Trikambhai Patel versus Hitesh Mahendrabhai Patel** : 2022 SCC OnLine SC 1376.
5. *Per contra*, Sri Dharmendra Gupta, the learned counsel for the opposite party No.2 has submitted that out of the amounts mentioned in the statement given at page 91 of the revision, only two sums of Rs.3.3 Lakh claimed to be paid on 15.03.2017 and 24.04.2017 were credited to the account of opposite party No.2. All the other cheques given by the revisionist to the opposite party No.2 were returned by the bank unpaid. During pendency of the complaint, the revisionist had entered into a settlement with the opposite party No.2 for payment of Rs.30 Lakh and he had handed over two cheques of Rs.15 Lakh each to opposite party No.2. The revisionist had himself stated in his cross examination that he had given an offer of compromise to the complainant-company and had given two cheques of Rs.15 Lakh each to the complainant and those cheques were also dishonored.
6. The revisionist had borrowed Rs.30 Lakh from the opposite party No.2 and had given 8 cheques to the complainant towards repayment of the loan amount. Only the first cheque dated 15.03.2017 issued for Rs.3,30,000/- was honoured by the Bank

and two cheques issued thereafter were dishonoured. On 24.04.2017, the opposite party no. 2 had transferred another sum of Rs.3,30,000/- through RTGS, All the other cheques issued by the opposite party no. 2 were returned by the bank unpaid due to insufficient funds in the account of the revisionist. Thereafter the opposite party no. 2 gave a cheque no. 000034 dated 05.09.2017 for Rs.27,60,000/- towards repayment of the loan, which was returned by the Bank unpaid with a Cheque return memo dated 06.09.2017 due to reason 'insufficient funds'. The opposite party no. 2 had sent a demand notice dated 14.09.2017, which was served on the opposite party no. 2. However, the opposite party no. 2 did not pay the amount and he did not send any reply to the notice.

7. The opposite party no. 2 produced oral and documentary evidence to prove his case. In his statement recorded under Section 313 Cr.P.C., the revisionist admitted that he had borrowed the money and that the cheque in question bears his signature, but he stated that he had not given the cheque to the complainant. He admitted the receipt of notice and also that he had not paid the amount of the cheque to the complainant. The revisionist had examined himself as DW-1 and he had produced two more witnesses.
8. The trial Court framed the following three points for determination –
 - (1) Whether the revisionist had taken loan from the opposite party no. 2 and he had given the cheque in question towards repayment of the balance amount?
 - (2) Whether the cheque has been returned unpaid for the reason 'funds insufficient' with the cheque return memo dated 06.09.2017?
 - (3) Whether the revisionist did not pay the amount of the cheque even after receipt of the notice dated 14.09.2017?
9. After taking into consideration the entire material on record, particularly the statement of the revisionist himself, the trial

court came to the conclusion that the revisionist had borrowed Rs.30 Lakh from the applicant on 03.03.2017, he had repaid merely Rs.6.6 Lakh and he was liable to pay Rs.27.6 Lakh as on 05.09.2017 towards repayment of the principal amount borrowed and the interest accrued thereon. The revisionist had given the cheque in question towards aforesaid liability of repayment of loan. The cheque had been returned by the bank unpaid for the reason 'funds insufficient' with the cheque return dated 06.07.2017 and the revisionist did not pay the amount even after receipt of a notice under Section 138 of the Negotiable Instruments Act. The appellate Court affirmed the order of the trial court.

10. Assailing the judgment of the trial court and the appellate court the learned counsel for the revisionist has admittedly made part payment of the amount of loan, a complaint under Section 138 of the Negotiable Instruments Act does not lie for the aforesaid amount of cheque that was issued by him. In support of this contention, he has relied on the judgment of the Hon'ble Supreme Court in the case of **Dashrathbhai Trikambhai Patel versus Hitesh Mahendrabhai Patel** : 2022 SCC OnLine SC 1376.

11. Section 138 of the Act reads as follows: -

“138. Dishonour of cheque for insufficiency, etc. of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years’], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless

—

- i. *the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
- ii. *the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*
- iii. *the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*

Explanation.—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.”

12. Section 138 of the Act provides that a drawer of a cheque is deemed to have committed the offence if the following ingredients are fulfilled:

(i) A cheque drawn for the payment of any amount of money to another person;

(ii) The cheque is drawn for the discharge of the “whole or part” of any debt or other liability. “Debt or other liability” means legally enforceable debt or other liability; and

(iii) The cheque is returned by the bank unpaid because of insufficient funds.

13. However, unless the stipulations in the proviso are fulfilled the offence is not deemed to be committed. The conditions in the proviso are as follows:

- a. *The cheque must be presented in the bank within six months from the date on which it was drawn or within the period of its validity;*
- b. *The holder of the cheque must make a demand for the payment of the “said amount of money” by giving a notice in writing to the drawer of the cheque within thirty days from the receipt of the notice from the bank that the cheque was returned dishonoured; and*
- c. *The holder of the cheque fails to make the payment of the “said amount of money” within fifteen days from the receipt of the notice.*

14. In **Dashrathbhai Trikambhai Patel** (Supra), after discussing some precedents on the point, it was held that: -

“34.1. For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation.

34.2. If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque.

34.3. When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted”.

15. In the present case, it is not the case of the applicant that he has discharged the whole or part of liability of Rs.27.6 Lakh to the complainant after issuance of the cheque in question and before institution of the complaint, therefore, principles of law laid down by the learned counsel for the revisionist in **Dashrathbhai Trikambhai Patel** (Supra) would not apply to the present case.

16. In view of the aforesaid discussion, I find no illegality in the judgment and order impugned herein. The revision is thus **dismissed**.

(Subhash Vidyarthi, J.)

Order Date :- 8.2.2024

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