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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 14-9-2018

Judgment delivered on 28-11-2018

ACQA No. 42 of 2009

- Bahadur Ali, Managing Director ABIS Exports (India) Pvt. Ltd., Baldeo Bag, Rajnandgaon (CG) through Attorney Girdhari Lal Soni.

---- Appellant

Versus

- Rajendra Patni S/o Shri S.M. Patni, Proprietor Rajendra Traders, Industrial Area, Dhamdha Road, Durg (CG).

---- Respondent

For Appellant	:	Mr. P.K.C. Tiwari Sr. Advocate with Mr. Ashutosh Trivedi, Advocate.
For respondent	:	Mr. Atanu Ghosh, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This acquittal appeal is preferred against the judgment dated 20-01-2005 passed by the Judicial Magistrate First Class, Rajnandgaon (CG) in Special Criminal Case No.681 of 2002 wherein the said Court has acquitted the respondent for charge under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act, 1981").

2. As per case of the appellant/complaint, he is having a plant for producing Kukkut Ahaar (Hen Cock Fodder) and

Pashu Ahaar (Animal Fodder) in the name and style of ABIS Exports (India) Pvt. Ltd., Baldeo Bag, Rajnandgaon (CG) whereas respondent is Proprietor of Rajendra Traders, Industrial Area, Dhamdha Road, Durg (CG) and he was appointed as Clearing and Forwarding Agent for the above said fodder. Respondent received fodder on various dates from the appellant and in the month of March 2000 he was under obligation to pay the amount to the tune of Rs.2,35,668/-. For the payment of the aforesaid amount, respondent had issued a cheque bearing No. 307810 dated 7-9-2000 in favour of the appellant which was deposited in the State bank, Rajnandgaon for clearance, but the same was dishonoured. Again, the cheque was submitted in Durg Rajnandgaon Gramin Bank which was also dishonoured due to stop payment direction issued by the respondent. The said information of dishonour of cheque was received by the appellant on 29-8-2000 and thereafter appellant issued a notice to respondent for payment of said amount on 5-9-2000 which was received by the respondent on 7-9-2000 but even after receiving the notice he did not pay the amount within 15 days as stipulated in the Act, 1881 that is why complaint under Section 138 of the Act, 1881 was filed against the respondent before the trial Court which resulted into acquittal.

3. Learned counsel for the appellant would submit as under:

i) As per Section 138 of the Act, 1881, dishonour of cheque for insufficient fund is a genus and dishonour for reasons such “as account closed”, “payment stopped”, “referred to the drawer” are only species of that genus. When payment was stopped by the respondent , it will be treated as dishonour for insufficient fund and therefore, offence under Section 138 of the Act, 1881 is established against the respondent.

ii As per Section 139 of the Act, 1881, statutory presumption that the cheque issued for discharge, in whole or in part, of any debt or other liability, the presumption is rebuttable but in the present case, the appellant/complainant has filed account of the respondent in which more than Rs.2,00,000/- was due to be paid by the respondent and therefore, it is established that the cheque of Rs.2,00,000/- is issued to discharge recoverable liability.

iii) (PW/1) Girdharilal Soni is an agent of the Managing Director of ABIS Exports who authorized him to initiate legal proceeding and complaint by Giridharilal is not in his personal capacity, therefore, the complaint is filed on behalf of the Managing Director and as he is fully acquainted with the facts of the case, his version is legally admissible evidence for establishing the guilt against the respondent.

iv) Finding of the trial Court that the respondent was not under any liability, is perverse, therefore, same is liable to be reversed.

4. On the other hand, learned counsel for the respondent submits that the cheque in question was given to the appellant as surety on 30-11-1999 and it was not drawn for any liability. Earlier the date mentioned in the cheque was 30-11-1999 which was corrected later on, therefore, it is not a cheque which is drawn for clearing any liability. He would further submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. From the evidence of Girdharilal Soni (PW/1) and Bharat Shrivastava (PW/2), it is established that poultry feed

and cattle feed were supplied to the respondent from the company of the appellant/complainant and there was an agreement between the parties to that effect. From the evidence of both these witnesses and account of respondent (Ex.P/2), it is established that more than Rs.2,00,000/- was due against the respondent on 30-3-2000. It is established from the evidence of both these witnesses that cheque was drawn in favour of the appellant by the respondent on 7-8-2000 to the tune of Rs.2,00,000/-.

7. Learned counsel for the respondent would submit that as per opinion of Girdharilal Soni (PW/1) (Para 18), some other date was written earlier in the cheque, but it was corrected later on.

8. In view of this Court, PW/1 Girdharilal Soni is common witness and he is not an expert witness. As per version of this witness (para 18), it appears that earlier some other date was written in cheque. Version of this witness is in a form of opinion, but as per Section 45 of the Indian Evidence Act, 1872, opinion of expert is only relevant, therefore, common man is not authorized to give opinion regarding any document and opinion part of this witness is not legally admissible evidence. This witness has clearly mentioned in his statement that date of 7-8-2000 is written in the cheque.

9. Section 118 of the Act,1881reads as under

:118 Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made:—
(a) of consideration —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;
(b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;

10. The cheque was produced before the trial Court in which date of 7-8-2000 is mentioned in the said cheque and there is no evidence from the respondent side that cheque was drawn in some other date, therefore, it is established that more than Rs.2,00,000/- was due against the respondent on 30-3-2000 that is why he issued a cheque dated 7-8-2000 to the tune of Rs.2,00,000/-. Therefore, finding of the trial Court that cheque was not issued for any liability is not based on evidence on record and same is not sustainable. PW/1 Girdharilal Soni who is authorized agent of Managing Director and was working in the same company since 1994 was fully acquainted with the facts of the case and he deposed before the trial court on behalf of the company which is legally admissible evidence and dishonouring of cheque for payment stopped is dishonouring for insufficient fund as per law down in the matter of **M/s. Laxmi Dyechem vs. State of Gujarat and others, reported in (2012) 13 SCC 375** by the Hon'ble Apex Court. Therefore, it is proved that cheque amounting to Rs.2,00,000/- was issued in favour of the appellant by the respondent and same was dishonoured as per provisions of Section 138 of the Act, 1881.

11 Accordingly, the appeal is allowed reversing the acquittal. The respondent is convicted for offence under Section 138 of the Negotiable Instruments Act, 1881 and awarded sentence of fine to the tune of Rs.2,25,000/- Rupees Two lakhs twenty-five thousand). The trial Court to take all steps for recovery. Upon depositing the entire amount, the whole amount shall be paid to the appellant against the liability of the respondent.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju