

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 6-10 -2018
 Judgment delivered on 28-11-2018

CRMP No. 465 of 2012

- Gajanand Burange S/o Shri Krishna Burange Aged About 50 Years R/o Prop. Anti- Pest Services Of India, Opp. C.M.D. College, Link Road, Bilaspur C.G.

---- Petitioner

Versus

- Laxmi Chand Goyal S/o Late Harchand Goyal Aged About 72 Years R/o R-2, Vinoba Nagar, Police Station Tarbahar, Bilaspur C.G.

---- Respondent

 For petitioner : Mr. Sunil Otwani, Advocate.
 For respondent : Mr. Ravindra Agrawal, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
CAV Order

1. This petition is preferred against the judgment dated 31-1-2011 passed by the Judicial Magistrate First Class, Bilaspur (CG) in Criminal Case No. 185 of 2010 wherein the said Court has acquitted the respondent for charge under Section 418 and 467 of the IPC 1860.

2. As per case of the petitioner/complainant, he borrowed a sum of Rs.4,00,000/- from the respondent in the month of July 2003 and had drawn four cheques in favour of the respondent for clearing debts. The whole of the amount of Rs.4,00,000/- was returned to the respondent, but the

respondent misused one cheque bearing No. 708057 and filled up amount of Rs.2,50,000/- in the said cheque to cause damage to the appellant which is an offence of cheating punishable under Section 418 and forgery punishable under Section 467 the IPC. The case resulted into acquittal by the trial Court.

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

- i) The respondent has mentioned some other account number in the cheque which is making false document, therefore, offence under Section 467 of the IPC is established. As the document is used to cheat with the knowledge that it is likely to cause wrongful loss to the appellant, therefore, offence under Section 418 of IPC is made out.
- ii The trial Court has not appreciated the evidence in its true perspective, therefore, same is liable to be set aside.

4. On the other hand, learned counsel for the respondent would submit that the finding of the trial Court is based on proper marshaling of the evidence and cheque was issued by

the appellant to discharge his liability, therefore, no offence is made out against the respondent.

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 the petitioner before the trial Court, it is established that he issued a cheque in favour of the respondent and it is not case that the respondent deceived him fraudulently or dishonestly to deliver the cheque.

7. Section 118 of the Act, 1881 reads 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;

8. In the cheque in question, date is mentioned as 28-10-2005, therefore, it shall be presumed that cheque is drawn

on the same date. There is no expert's evidence which rebutted the presumption that cheque was drawn on some other date. It is also presumed that every cheque is drawn for consideration. Therefore, it shall be presumed that there was liability against the appellant that is why he had drawn the cheque in favour of respondent to clear the outstanding. Cheque was issued by the Bank of Baroda and it was presented before the same Bank for clearance which was having the account of the petitioner, therefore, it cannot be said that any manipulation is done in the cheque to cause loss to the appellant.

9. The trial court has elaborately discussed the evidence and came to conclusion that charges level against the respondent are not established. After re-assessing the evidence this court has no reason to substitute the contrary finding

10. Accordingly, the petition is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju