

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.37 of 2014**

- Surjeet Singh S/o Kartar Singh Aged About 69 Years R/o C-1, LIC Colony, Sector-6 Bhilai, PS - Sector-6, Bhilai, Tah. And Distt. Durg C.G., Chhattisgarh

---- Appellant**Versus**

- Anil Kumar Diwan S/o Shri Ajay Kumar Diwan Aged About 46 Years R/o House No. 232, Mango Farm, Sunder Nagar Raipur, Tah. And Distt. Raipur C.G.

---- Respondent

 For the appellant : Shri PR Patankar, Advocate
 For the respondent :None present though served

Hon'ble Shri Justice Ram Prasanna Sharma
Judgment On Board

30.11.2018.

1. This appeal is directed against the judgment of acquittal dated 07.10.2013 passed by Judicial Magistrate First Class, Durg (CG) in Criminal Complaint Case No.671/2013, wherein the said Court acquitted the respondent for the charges under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act 1881').

2. As per the case of the appellant/complainant the respondent/accused had purchased a truck from him for a consideration of Rs.4 lakh and in order to make the payment of balance amount the respondent issued two cheques bearing No.291076 and 291077 dated 21.4.2005 and 21.6.2005 respectively each amounting to Rs.50,000/- of Jila Sahakari Kendriya Bank Maryadit. Both the cheques were deposited for clearance but returned unpaid on account of insufficient fund on

28.9.2005. After dishonour of both the cheques the appellant sent a legal notice dated 11.10.2005 by registered post but even after service of notice the respondent did not repay the amount. Thereafter complaint under Section 135 of the Act 1881 was filed before the trial court which resulted into acquittal.

3. Learned counsel for appellant submits as under:

(i) Though the cheques were issued by the respondent but he did to repay the amount to the appellant after service of notice and the trial Court wrongly concluded that the amount was already refunded to the appellant.

(ii) The trial Court has erred in not appreciating the documents and not appreciating the documentary evidence available in the record therefore, the finding of the trial Court is liable to be set aside.

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

5. From the agreement (Ex-P/6) it is clear that one truck was sold to the respondent for a consideration of Rs.4 lakh and both the cheques amounting to Rs.50,000/- each were issued to discharge the liability of consideration of sale of the said truck. The trial Court recorded that the respondent did not repay the amount even after the notice, but opined that the cheque amount was already paid by the respondent.

6. Now the point for consideration before this Court is whether both the cheques were issued to discharge the liability or not.

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. Admittedly the cheques were issued for clearance of the consideration amount of the truck. If the amount would have been paid earlier there was no occasion to issue cheques for the same amount. Dates of the cheques are clearly mentioned in both the cheques, therefore, it shall be presumed that the cheques were issued to that date. As per Section 146 of the Act 1881 cheques were returned by bank slip of dishonour, therefore, it is clearly established that the cheques were dishonoured for insufficient fund. Looking to the entire evidence it cannot be inferred that the amount of cheque was already paid to the appellant. The finding arrived at by the trial Court is not sustainable. The appellant is entitled to get the cheque amount Rs.1 lakh and in addition to that since the transaction is of the year 2005, he is entitled to get Rs.50,000/- on account of expenses and interest.

9. 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.1,50,000/- (Rupees One lakh Fifty Thousand only).

The trial Court to take all steps for recovery. The respondent is directed to deposit the fine amount before the trial Court within a month. 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**