

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 148 of 2017**

Smt. Rashmi Bilaiya, W/o Shri V.K. Bilaiya, Aged About 27 Years, R/o 60B, Phase-5, A. Maitri Nagar, Bhilai, Police Station Nevai, District-Durg (C.G.)

---- Appellant

Versus

Rajendra Singh Saggu (Kakku), S/o Late Sardar Harbhajan Singh Saggu, Aged About 52 Years, R/o 1820, Sanatam Dharam Mandir Raod, Gorakhpur, Jabalpur, Police Station Gorakhpur, District- Jabalpur (M.P.)

---- Respondent

For Appellant : Mr. Navin Shukla, Advocate.

For Respondent : Mr. Shravan Agrawal, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board**

04/12/2018

1. This acquittal appeal is preferred under Section 378 (4) of the Code of Criminal Procedure, 1973 against judgment dated 07.12.2015 passed by Judicial Magistrate First Class- Durg (C.G.) in Complaint Case No. 447/2012, wherein the said court acquitted the respondent for commission of offence under Section 138 of the Negotiable Instrument Act, 1881 (For short "the Act, 1881").
2. The appellant/ complainant filed a complaint under Section 138 of the Act, 1881 and as per her version, the respondent had taken loan from her to the tune of Rs. 9,00,000/- and in partial discharge of the debt liability, issued a number of cheques of State Bank of India, Branch-Tularam Chowk, Jabalpur. The complaint is filed for dishonouring of three cheques bearing No. 549664 dated 22.07.2010 to the tune of Rs. 50,000/-, 549665

dated 22.07.2010 to the tune of Rs. 50,000/- & 907981 dated 22.07.2010 to the tune of Rs. 1,00,000/-. After completion of trial, the trial court opined that the cheques amount is discharged by the respondent, therefore, no liability can be fastened on him and the trial resulted into acquittal.

3. Learned counsel for the appellant submits that the respondent has failed to explain repayment of Rs. 9,00,000/-, therefore, charges leveled against him were established before the trial court, but the trial court committed illegality in passing order of acquittal.
4. On the other hand, learned counsel for the respondent submits that the finding arrived at by the trial court is based on oral and documentary evidence adduced before it and the same is not liable to be interfered with.
5. The complaint under Section 138 of the Act, 1881 was filed for three cheques as mentioned above. Record of the trial court goes to show that as per receipt dated 02.04.2008 (Ex.D-2), husband of the appellant has received amount of cheques bearing No. 549657 to 549665 each cheques issued for Rs. 50,000/- and by this receipt, he received Rs. 3,00,000/- from the respondent. From this receipt, it is clear that the cheques bearing No. 549664 & 549665 is cleared by the respondent and amount of these two cheques was paid to the appellant whose husband has received the amount on her behalf on 02.04.2008, therefore, finding arrived at by the trial court is correct that liability of the cheques bearing No. 549664 & 549665 is cleared

by the respondent and he is not liable to pay for the said two cheques.

6. From Ex. D-3 which is an agreement between husband of the appellant and the respondent, it is clear that both the parties agreed that 5 cheques of Rs. 1,00,000/- each is canceled from 29th January, 2007. Cheque bearing No. 907981 is amounting to Rs. 1,00,000/- and the appellant is unable to explain that any other cheque of Rs. 1,00,000/- was issued by the respondent. From this agreement, it is clear that cheque of Rs. 1,00,000/- which is mentioned in the complaint is also canceled by this agreement and both the parties are bound by agreement (Ex. D-3).
7. The trial court has elaborately discussed the entire evidence and came to conclusion that respondent was not under any liability to repay the amount of cheques mentioned in the complaint and recorded finding of acquittal.
8. After reassessment of oral and documentary evidence adduced by both sides, this Court has no reason to record contrary finding. As the liability of the cheques was cleared by the respondent, offence under Section 138 of the Act, 1881 is not made out. It is not a case where respondent should be called for hearing again for full consideration of this petition.
9. Accordingly, the acquittal appeal is liable to be and is hereby dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge