

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 55 of 2009

Judgement reserved on 6-10-2018

Judgement delivered on 30-10-2018

- R.S. Murarka, s/o. Mahavir Prasad, aged 57 years, r/o. Imlipara, Bilaspur, Tehsil & Dist. Bilaspur (CG).

---- Appellant.

Versus

- Ku. Lata Thakur, d/o. Bhagwati Singh Thakur, c/o. Smt. Kamla Bai Thakur, aged about 40 years, Near FCI Godown, Tarbahar, Bilaspur, Tehsil & District Bilaspur (CG).

---- Respondent

For Appellant : Mr. Qamrul Aziz, Advocate.

For Respondent : None.

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

CAV Judgment

1. This appeal is directed against the judgment of conviction and order of sentence dated 2-4-2007 passed by the Court of Additional Chief Judicial Magistrate, Bilaspur (CG) in complaint case N. 137 of 2004 wherein the said Court acquitted the respondent from the charge under Section 138 of the Negotiable Instrument Act, 1881 (for short, "the Act, 1881").
2. As per version of the appellant/complainant, respondent/accused gave two post dated cheques of each of Rs.45,000/- dated 30-12-2002 and 30-1-2003 on account of purchase of pipes, sanitary fittings and fabrication work. The appellant presented both

cheques for its collection within its validity period but the same were returned due to insufficient fund in respondent's bank account. Appellant made demand for payment of Rs.90,000/- i.e., amount of both cheques by giving notice in writing to the respondent. Despite notice, respondent failed to make payment of the said amount to the appellant within 15 days of the receipt of the said notice and thereafter the appellant filed complaint case within statutory period before the Court of Chief Judicial Magistrate, Bilaspur, which resulted into acquittal.

3. Learned counsel for the appellant submits as under:

- I) The trial Court has erred in holding that notice of demand was not duly served on the respondent.
- ii) Notice was sent on correct address on which summon of the complaint case has been sent, therefore, claim of the respondent that she did not receive notice, is not liable to be accepted.
- lii) The trial Court erred in holding that cheques were not issued against any dues but in fact it was issued against unexecuted agreement of sale of land.

- iv) The trial Court ignored the fact that without there being any agreement to sell no person can give any amount to unknown vendor, therefore, finding of the trial Court is liable to be reversed.

4. I have heard learned counsel for the appellant and perused the record of the court below in which judgment was passed.
5. As per version of the complainant amount was due on respondent for pipes, sanitary fittings and fabrication work like grill, windows and other works. No credit bill was produced before the trial Court regarding pipes, sanitary fittings and fabrication work and even in notice sent to respondent after dishonor of cheques it is not mentioned as to how the amount of all this work is calculated to the tune of Rs.90,000/-. It is admitted by the appellant (PW/1) in his statement that when he sells material in credit then he issues credit bill and when he sells the material in cash he issues cash bill, but in the present case, no credit bill was issued to the respondent and no record of credit bill was produced before the trial Court. In this way, there is no document in record regarding liability of the respondent for amount in question.
6. For commission of offence under Section 138 of the Act, 1881, there must be liability on the part of the respondent and in

absence of any responsibility, said offence is not made out. The trial Court has elaborately discussed the issue in evidence and came to conclusion that in absence of liability appellant cannot be convicted for commission of the said offence. This court has reassessed the evidence and in view of this court, finding arrived at by the trial Court is not liable to be interfered with by this court.

7. Accordingly, the appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju