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HIGH COURT OF CHHATTISGARH, BILASPUR

Acquittal Appeal No. 22 of 2011

Badrivishal Sharma S/o R.R. Sharma, aged about 43 years, R/o Ghasidas Nagar, Police Station- Jamul, District Durg (CG)

---- Appellant

Versus

Maniram Kosare S/o Sahdev Kosare, aged about 42 years, R/o Post JR/OPR(c), Department MMS-1 Bhilai Ispat Sayantra, Bhilai, District Durg (CG)

---- Respondent

For Appellant : Shri Jitendra Gupta, Advocate
For Respondent : Shri Arvind Kumar Dubey, Advocate

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA

JUDGMENT ON BOARD

24/10/2018

1. This appeal is preferred against the judgment dated 23rd November, 2010, passed by the Judicial Magistrate First Class, Durg (CG) in Complaint Case No. 113/2010, wherein the said Court has acquitted the respondent/accused of the charge under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act 1881').

2. As per the case of appellant/complainant in the month of October, 2006, the accused/respondent borrowed a sum of Rs.26,000/- in cash from him for domestic affairs and promised to return the same within six months, but even after expiration of the above said period, he did not repay the same. The respondent issued a cheque dated 30.4.2007 in favour of the appellant and the said cheque was submitted to Bhilai Branch of United Bank of India, but on 10.5.2007, the said cheque was returned for want of sufficient amount in the account of the respondent. After dishonour of the said cheque, the complainant served statutory notice dated 17.5.2007 to make the payment of Rs.26,000/-, but the respondent neither gave reply to the notice of the appellant nor paid the above amount and that is why the complaint under Section 138 of the Act 1881 was filed before the said Court.

3. Learned counsel for the appellant submits that the trial Court though accepted the version of the complainant that it is a case of dishonour of cheque, but dismissed the complaint on the ground that the provisions of Money Lenders Act have not been complied with. He submits that case of the appellant is not based on Money Lending Act, but it is based on Negotiable Instruments Act, therefore, the finding arrived at by the trial Court is not liable to the sustained.

4. On the other hand, learned counsel for the respondent submits that the complainant has failed to establish that any money was borrowed by the respondent from him and therefore, no liability can be fastened on him looking to the evidence adduced before the trial Court.

5. As per the finding of the trial Court, it is established that the respondent has issued a cheque in favour of the appellant for discharging his liability of loan to the tune of Rs.26,000/-. The trial

Court further opined that version of the respondent regarding return of money is not substantiated by evidence. The finding of the trial Court is not challenged by the respondent and therefore, it attained finality.

6. Now the core issue for consideration of this Court is whether the provisions of M.P. Money Lending Act, 1934 will apply in the present case.

7. It is a settled law that transaction under the Act 1881 is made to maintain confidence on Bank transactions and provisions of Money Lending Act has no bearing with confidence on Institution of Banks, therefore, the finding arrived at by the trial Court is not sustainable. As the respondent has failed to establish that he has returned the loan amount of Rs.26,000/- to the appellant, charges under Section 138 of the Act 1881 is established against the respondent and he is hereby convicted for the same offence.

8. Considering the facts and circumstances of the case, the respondent is fined with amount of Rs.26,000/- which he shall deposit before the trial Court on or before 30th November, 2018. On depositing such amount, the whole amount shall be paid to the appellant for satisfaction of the debt amount.

9. Accordingly, the appeal is allowed. **Sd/**

(Ram Prasanna Sharma)
JUDGE

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