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HIGH COURT OF CHHATTISGARH, BILASPUR
Judgment reserved on 6-10 -2018
Judgment delivered on 28-11-2018

ACQA No. 154 of 2012

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

---- Appellant

Versus

- 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.

---- Respondent

For Appellant : Mr. Ravindra Agrawal, Advocate

For respondent : Mr. Sunil Otwani, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma
CAV Judgment

1. This acquittal appeal is preferred against the judgment dated 1-2-2011 passed by the Judicial Magistrate First Class, Bilaspur (CG) in Complaint Case No. 184 of 2010 wherein the said Court has acquitted the respondent for charge under Section 138 of the Negotiable Instruments Act, 1881 (for short, “the Act, 1981”).

2. As per case of the appellant/complainant, on 23-10-2005 the respondent/accused borrowed a sum of Rs.2,50,000/- from him for the purpose of extension of business and for returning the said amount he had drawn a cheque bearing No. 708057 dated 28-10-2005 in favour of the appellant. The said cheque was presented before the Bank for clearance, but the same was dishonoured on 29-10-2005 with endorsement of exceeds arrangement. On 7-11-2005 the respondent was served with legal notice but he failed to repay the amount of cheque that is why complaint under Section 138 of the Act, 1881 was filed against the respondent before the trial Court which resulted into acquittal.

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

i) Issuance of cheque by the respondent is not in dispute and as per Sections 118 and 139 of the Act, 1881 unless contrary is proved it shall be presumed that negotiable instrument has been issued for consideration and complainant is holder of the cheque in due course.

ii As per version of the respondent, he borrowed Rs.4,00,000/- from the appellant in the month of July, 2003 and in lieu thereof four cheques were given to him as security of repayment of loan amount of Rs.4,00,000/- and amount of Rs.4,00,000/- has been returned to the appellant on 24-12-2003 and out of four cheques, one cheque has been misused by the appellant and the instant complaint has been filed, but that fact has not been proved by the respondent, therefore, whole defence taken by the respondent is after-thought.

Iii) When cheque is dishonoured by the Bank for the reason of exceeds arrangement, the trial Court should have presumed dishonouring of cheque for insufficient fund and it is not a case where any material alteration in the cheque by the appellant is established, therefore, the trial Court committed error of law and facts while passing the impugned judgment and same is liable to be set aside and the act of the respondent is punishable as per Section 138 of the Act,1881.

4. On the other hand, learned counsel for the respondent would submit that wrong account number was mentioned in the cheque, therefore, bank was not under obligation to honour the said cheque. Again, loan amount of Rs.4,00,000/- was taken in the year 2003 and four cheques were issued in favour of the appellant but even after returning the entire amount of Rs.4,00,000/- one cheque issued by the respondent is misused by the complainant for filing the instant complaint case. He would further submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

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

6. 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:—
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> (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;

7. It is not a case of the respondent that cheque was not issued in favour of the appellant. As per case of the respondent earlier he borrowed Rs.4,00,000/- from the appellant in the year 2003 which was returned by him and he had drawn four cheques for that loan amount and one cheque is misused by the complainant/appellant for filing this complaint.

8. As per version of the respondent, no cheque was issued in the year 2005 in favour of the appellant, but version

of the respondent is rebutted by the statement of the appellant side supporting with document of cheque in which date of issuance of cheque was mentioned as 28-10-2005. No expert was examined to establish that cheque was drawn in some other date, therefore, presumption regarding issuance of cheque on 28-10-2005 is not rebutted by the respondent before the trial Court. Cheque which was issued by the respondent was issued by the Bank of Baroda and it was submitted in the same Bank for clearance which returned the same with endorsement of exceeds arrangement.

9. As per Section 146 of the Negotiable Instruments Act, 1881, the Court shall, in respect of every proceeding under this Chapter, on production of bank’s slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved. As the bank's slip is not disproved by the respondent, it is clearly established that cheque is dishonoured for insufficient fund. The cheque was issued by the Bank of Baroda in the present case and it was submitted before the same Bank. The purpose of enactment of the Act, 1881 is to maintain confidence of Bank transactions.

10. Looking to the evidence of both sides, it is clearly established that the cheque was issued to clear the liability of the year 2005 and therefore, argument advanced on behalf of the respondent regarding no transaction took place between the parties after 2003 is not sustainable. Again, cheque is presented before same Bank which issued the cheque and it is not a case where any manipulation is done in the said cheque. When even after notice the respondent did not pay the amount, the appellant had no option but to file criminal complaint case against the respondent as envisaged under Section 138 of the Act, 1881. Finding arrived at by the trial Court is not sustainable.

11. 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.3,00,000/- (Rupees Three lakhs). The trial Court to take all steps for recovery. 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

Raju