

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.46 of 2015**

- Vidyadhar Patel S/o Shri Madanlal Patel Aged About 56 Years R/o Village Linjir, Post Bengachi, Police Station And Tah. - Baramkela, Civil And Rev. Distt. Raigarh Chhattisgarh.

---- Appellant**Versus**

- Ajay Kumar Agrawal S/o Shri Shubhakaran Agrawal Aged About 36 Years R/o Village Baramkela In Front Of Samudayik Health Centre, Post, Police Station And Tah. Baramkela, Civil And Rev. Distt. Raigarh Chhattisgarh.

---- Respondent

 For the appellant : Shri Roop Naik, Advocate
 For the respondent : Shri Rajesh Ranjan Sinha, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
Judgment On Board

28.11.2018.

1. This appeal is directed against the judgment of acquittal dated 04.01.2014 passed by Judicial Magistrate First Class, Raigarh (CG) in Criminal Complaint Case No.107/2012, 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 on 10.7.2017, the respondent/accused taken a loan of Rs.80,000/- from the appellant for opening a stationery shop by oral agreement. On 26.02.2009 the respondent drawn a cheque to the tune of Rs.80,000/- bearing No.388216. The said cheque was produced

by the appellant before the State Bank of India, Branch Baramkela, Distt. Raigarh for clearance. On 27.02.2009 the bank informed that the cheque is dishonoured due to insufficient amount in the account. The appellant issued a notice to the respondent for payment of the said amount but the amount was not paid as stipulated in the Act 1881. Thereafter the appellant filed a complaint before the trial Court which resulted into acquittal.

3. Learned counsel for appellant submits as under:

(i) Notice was issued to the respondent as per Ex-P/3 and it was sent through registered post. Receipt of the acknowledgment is Ex-P/4 and delivery of the said notice is mentioned in the register of the Post Office vide Ex-P/5. Therefore, finding arrived at by the trial Court that the notice was not served upon the respondent is without substance and the same is liable to be reversed.

(ii) As the respondent was under obligation to pay his liability, he issued a cheque, therefore, it is proved that cheque was issued to clear his liability but the trial Court recorded a finding of acquittal which is not in the fitness of factual aspects of the matter and the same is liable to be reversed.

4. On the other hand, learned counsel for the respondent submits that the finding arrived at by 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:-

(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. Admittedly the respondent has issued a cheque in favour of the appellant for clearing his liability. Documents Ex-P/3, P/4 & P/5 goes to show that notice was served on the respondent. Therefore, finding of the trial Court that the notice was not served to the respondent is contrary to the evidence on the record. When the bank has issued a slip that cheque has been dishonoured it is presumed as per Section 146 of the Act 1881 that the cheque is dishonoured for insufficient fund. The respondent side has not disapproved otherwise. The purpose of enactment of the Act 1881 is to maintain confidence of the bank transactions and therefore, the evidence adduced by the appellant side is established that the cheque was dishonoured as per the report of the bank. Even after the notice the respondent did not pay the amount, the appellant had no option but to file criminal complaint case as per the Act 1881. The arguments advanced on behalf of

the respondent is not sustainable looking to the facts and circumstances of the case. Again finding arrived at by the trial Court is also not sustainable.

8. 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.1,00,000/- (Rupees One lakh). The trial Court to take all steps for recovery. The respondent is directed to deposit the above amount within a month from the date of this judgment. 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**