

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 168 of 2006

Judgement reserved on 22.01.2019

Judgement delivered on 28.11.2019

Smt. Parasmani Choubey, W/o. Shri Prem Avtar Choubey, House Wife,
Aged about 40 years, R/o. Namnakala, Ambikapur District Surguja
(C.G.)

---- **Applicant**

Versus

Daljeet Singh Juneja @ Vikkal, S/o. Shri Harbansh Singh, Aged about
30 years, Proprietor Apollo Agency, Alakhnanda Complex,
Ambikapur, District Sarguja (C.G.)

---- **Respondent**

For Applicant : Mr. Jai Prakash Shukla, Advocate
For Respondent : Mr. A.D. Kuldeep, Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

1. Facts of the case in brief are that the complainant was the proprietor of Apollo Agency which was situated in Alakhnanda Complex, Ambikapur. The applicant and her husband were involved in the business of transpiration. Tyres and tubes were purchased by the applicant from the shop of the complainant since 1999 and the payment was being made to him by cash or cheque. It is alleged that earlier Rs. 26,000/- was outstanding in the name of applicant and on 30.12.1999 the applicant purchased a tyre for Rs.

18,000/- on credit from the shop of complainant. It is further alleged that for payment of outstanding amount the applicant had issued a cheque of Rs. 19,000/- of Central Bank Ambikapur which on presentation in the bank got dishonoured and returned to him with an endorsement of insufficient funds. Thereafter on 19.05.2000 a legal notice Ex.P-7 was sent to the applicant through his advocate even though the applicant did not respond to it. Ultimately the complainant filed the aforesaid complaint case against the applicant. After recording statement of the witnesses the learned Chief Judicial Magistrate, Ambikapur found the involvement of the accused/applicant in the crime in question and thus held him guilty under Section 138 of the Negotiable Instrument Act. However, in appeal the conviction was maintained but the sentence was reduced to till rising of the Court and imposed fine of Rs. 25,000/-. Hence, this revision.

2. Learned counsel for the applicants submits that the judgment of conviction and order of sentence passed by both the Courts below is arbitrary, illegal and contrary to the law. He submits that Courts below completely overlooked that the material on record and erroneously convicted and sentenced the accused/applicant as mentioned above.
3. On the other hand, learned counsel for the respondent contended that there is no illegality in conclusion arrived at by the trial court and the petition deserves to be dismissed.

4. Having regard to the arguments addressed by the learned counsel for the parties and perused the entire record, it is evident from the evidence of PW-1 and PW-2 that the transactions were held between the parties on 19.12.1999 and on 30.12.1999, against which credit memo Ex.P-5 and Ex.P-6 were issued by the complainant. The Cheque Ex.P-1 was issued by applicant in favour of complainant for repayment of outstanding the credit amount for tyres. It is also evident from the record that even the notice issued by the complainant through his advocate remained unresponded which led him to take recourse under Section 138 of the Negotiable Instrument Act. Thus, the act of the accused/applicant in issuing a cheque but not maintaining the sufficient balance in his account makes her liable for being held guilty under Section 138 of the Negotiable Instrument Act and being so both the Courts below were fully justified in convicting her accordingly but taking a lenient view while sentencing her only till rising of the Court. No interference with the judgment under challenge in this revision is visible and being so it is hereby maintained and the revision dismissed.

Sd/-

(Vimla Singh Kapoor)

JUDGE