

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 453 of 2010

Judgement reserved on 12.04. 2019

Judgement delivered on 04.12.2019

Smt. Vimla Bhatt W/o. Yogesh Kumar Bhatt, R/o. Supervisor in Mahila Bal Vikas, Sevtapara, Ward No. 7, Dongarhgaon, Tahsil Dongarhgaon, District Rajnandgaon (C.G.)

---- Applicants

Versus

Pradeep Jain, S/o. Menichand Jain, Aged about 35 years, Occupation Jewellers, R/o. Behind of Kanji House, Choukhdiyapara, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.)

---- Respondent

For Applicant : Mr. H.S. Ahluwalia, Advocate.

For Respondent : Mr. Abhishek Sinha, Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

CAV Judgment

Case of the prosecution in brief is that, there was cordial relations between the complainant and the accused and on the basis of said relationship the complainant offered to purchase a motorcycle. On 25.02.2007 the complainant purchased a second hand Herohond motorcycle and agreed to pay Rs. 28,000/- of the said motorcycle. The complainant paid Rs. 4000/- in cash and for

remaining amount of Rs. 24,000/- he issued a cheque of Durg-Rajnandgaon Gramin Bank in favour of the applicant. It is further alleged on presentation in the bank got dishonoured and returned to him with an endorsement that the account was closed under Ex.P-2. Thereafter on 29.05.2007 a legal notice Ex.P-4 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, Rajnandgaon 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 findings recorded by the trial Court has been affirmed by the Appellate Court. 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 clear from the evidence of the complainant (PW-1) that on 25.02.2007 he purchased a second hand motorcycle bearing registration No. CG08-A 3246 from the applicant and he paid cash of Rs. 4,000/- to him and for the remaining amount of Rs. 24,000/- the applicant issued a cheque in favour of complainant under Ex.P-1. The said cheque was got dishonoured by the bank with an endorsement that the account was closed vide Ex.P-2. It is also evident from the record that even the notice Ex.P-4 issued by the complainant through his advocate but the applicant did not receive and refused to accept the same and the notice was returned back as unserved Ex.P-5 which led him to take recourse under Section 138 of the Negotiable Instrument Act. Even the applicant issued a cheque of closed account in favour of complainant which 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 under Section 138 of Negotiable Instrument Act. No interference with the judgment under challenge in this revision is visible and being so it is hereby maintained.

5. As far as the sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place 12 years ago and that the appellant has already remained in jail for 8 days, in my opinion, no useful purpose is going to be served in

again sending her to jail. Accordingly, her jail sentence is reduced to the period already undergone. With the above, the revision stands allowed in part.

Sd/-

(Vimla Singh Kapoor)

JUDGE

Santosh