HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 464 of 2015

Dinesh Kumar

Applicant

Versus

Champeshwar Sahu & Another

Respondent

Post for pronouncement of the order on 20.09.2019

JUDGE

20.09.2019

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 30.07.2019

Order Delivered on : 20/09/2019

CRR No. 464 of 2015

- Dinesh Kumar S/o Siyaram Dewangan Aged About 46 Years R/o Jaamgaon, Police Station Ranchirai, Tahsil Patan And District Durg, Chhattisgarh,

---- Applicant

Versus

- Champeshwar Sahu And Anr. S/o Jeevdhan Sahu Aged About 46 Years R/o Marfat Ramesh Kumar Rathi, Rathi Tambaku, Ganjpara Durg, Tahsil And District Durg, Chhattisgarh,
- State Of Chhattisgarh Through District Magistrate Durg, District Durg, Chhattisgarh

---- Respondents

For Applicant : Shri Praveen Dhurander, Advocate
For Respondent No.1 : Shri Shikhar Bakhtiyar, Advocate
For Respondent No.2/State : Shri I.Lakra, Dy.GA

C A V Order

20/09/2019

Present revision arises out of impugned judgment of conviction and order of sentence dated 05.06.2015 passed by the Fourth Additional Sessions Judge, Durg in Cr.A. No. 235/2014 whereby the learned appellate court below has confirmed the conviction and sentence of the accused/applicant as awarded by the learned Judicial Magistrate First Class. Durg in Complaint Case No. 314/2012 vide its judgment dated 24.07.2014 and altered the sentence under Section

138 of the Negotiable Instrument Act and sentenced him to undergo SI for one year with compensation of Rs. 7,70,000/- plus default stipulation.

3. Brief facts of the case are that the complainant filed a complaint case against the applicant/accused alleging offence under Section 138 of the Negotiable Instrument Act which was registered as complaint case No. 314/2012. As per allegation, case of the prosecution is that the complainant/accused was working as agent in different companies and the complainant had given Rs. 6,00,000/- to the applicant for depositing in various schemes and when the complainant sought documents with regard to the above investment, no document was provided by the applicant. Hence, the complainant sought for his amount of Rs. 6,50,000/- back from the applicant/accused and to satisfy the complainant, applicant gave blank cheque which was dishonoured by the Bank. A complaint case was filed against the applicant/accused before the Judicial Magistrate First Class, Durg.

4. So as to prove the guilt of the accused/applicant, the complainant has examined one witness. Statement of the accused/applicant was also recorded under Section 313 Cr.P.C in which he denied the charges levelled against him and pleaded his innocence and false implication in the case and examined two defence witnesses.

5. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 24.07.2014, learned Judicial Magistrate First Class has convicted the accused/applicant for the offence under

Section 138 of the Negotiable Instruments Act and sentenced him to undergo SI for one year and to pay compensation of Rs. 7,70,000/- with default stipulation. This order was appealed by the applicant and in appeal, learned appellate court confirmed the conviction and sentence of the applicant. Hence, the present revision.

6. Counsel for the applicant submits that the lower appellate court and trial court has erred in law as well as in facts in convicting and sentencing the applicant under Section 138 of the Negotiable Instruments Act. Both the courts below have misconceived the law involved in the case and wrongly appreciated the evidence on record. The complainant has not proved the compliance of provisions of Section 138 of the Negotiable Instruments Act. Hence, the applicant has wrongly been convicted. He submits that the blank cheque was admittedly given with a purpose of security and it has not been pleaded and proved by evidence as to when the cheque was given so the impugned judgment of conviction and order of sentence is illegal and liable to be set aside. Reliance has been placed on various judgments **2015(1) SCC 99 (K.Subramani Vs. K.Damodar Naidu); 2003 Cr.L.J. 411 (Antony Vs. K.G.Raghavan); 2001(1) MPLJ (Jitendra Singh Flora Vs. Ravikant Talwar); (2008) 7 SCC 137(Sudhir Kumar Bhalla Vs. Jagdish Chand and Others).**

7. On the other hand, counsel for the State/respondent supported the judgment impugned and submits that the signing of cheques by the applicant indicates that he admitted is liability and he has not rebutted the presumption of 139 of the Negotiable Instrument Act therefore not only debt but the liability also falls for the criminal

proceedings under this Act. Reliance has been placed in the matter of **Rohitbhai Jivanlal Patel Vs. State of Gujarat & Another reported in SCI Cr.A. No. 508 of 2019** vide judgment dated 15.03.2019 and the order dated 17.05.2019 passed by this Court in Cr. Rev. 56/2010.

8. Heard counsel for the parties and perused the material on record.

9. Applicant/Accused has stated in his 313 Cr.P.C. statement that he gave the cheque as security to the complainant. Counsel for the applicant has drawn the attention towards the judgment of the Apex Court in the matter of **Sudhir Kumar Bhalla Vs. Jagdish Chand and Others reported in (2008)7 SCC 137**, wherein it has been held as under:

> 22. On examination of the above-stated findings of the learned Single Judge in the judgment impugned before us, we find that the learned Single Judge has not addressed himself on the legal question raised before him by the appellant that the criminal liability of the appellant under the provisions of Section 138 of the Act are attracted only on account of the dishonour of the cheques issued in discharge of liability or debt, but not on account of issuance of security cheques. The learned Single Judge has also not given cogent, satisfactory and convincing reasons for disbelieving and discarding the pre-charge evidence of the appellant corroborated by the evidence of the expert opinion in regard to the interpolation in and fabrication of the cheques by adding one more figure '0' to make Rs.30,000/- to Rs.3,00,000/- and similarly adding one more figure '0' to make Rs.40,000/- to Rs.4,00,000/-.
> 23. In the backdrop of the facts of these cases, we

> are of the opinion that the judgments and orders of the High Court cannot be sustained on the premise that the High Court has not addressed itself on the above-said two legal questions raised by the appellant and, therefore, the impugned judgments and orders dated 25.01.2007 and 19.02.2007 are set aside. The interest of justice should be sub-served if the matters are remitted to the High Court to decide the appeals filed by the respondent against the appellant and criminal miscellaneous petitions seeking for quashing the first information reports registered against the respondent and his wife by the police for commission of the offences stated in FIR Nos.93 and 94 of 1998. Needless to say that any observation made by us in this judgment shall not be construed as an expression of opinion on the merits of the cases, which shall be decided by the High Court on their own merits in accordance with law.

10. Complainant has clearly stated that he gave Rs. 6,50,000/- to the applicant for investment and when he demanded back the amount, accused signed the cheque and gave it to him which got dishonoured. The provisions contained in Sections 118 and 139 of the Negotiable Instruments Act, being the special rules of evidence applicable to the case as follows:

> "118. Presumption 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, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for

consideration;

(b) as to date---that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance-----that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer----that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements----that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps--- that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course----that the holder of a negotiable instrument is a holder in due course;

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence of fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

"139. Presumption in favour of holder ---- It shall be presumed, unless the contrary is proved, that the holder is a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, if any debt or other liability."

11. In the matter of **Rohitbhai Jivanlal Patel** (supra) and in the order dated 17.05.2019 of this High Court, wherein it has been clearly stated that the signing of cheque by the applicant indicates that he admitted his liability. Section 139 of the Negotiable Instruments Act would mandate the presumption that the cheque concerns a legally enforceable debt or liability. The Appellate Court affirmed the aforesaid factual findings. The Trial Court and the Appellate Court has arrived at the specific concurrent factual finding that the cheque had admittedly been signed by the respondent-accused. The scope of criminal revision is very limited under Section 397 Cr.P.C. as it imposes certain limitations for exercise of revisional jurisdiction. Thus, this Court does not find even any illegality or perversity in the orders passed by the Courts below and does not call for interference. Accordingly, I find no merit in the present revision. Same is accordingly dismissed.

Sd/-

(Rajani Dubey)
Judge

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