NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on - 30.07.2019

Order delivered on - 24.10.2019

CRR No. 327 of 2019

1. Ambika Traders Through Proprietor Rajesh Lalwani S/o Thawar Das Lalwani, Aged About 40 years Address - Ambika Traders/ Ambika General Store, Sharda, Talkies Near Marwadi School, Durg Tahsil And District Durg Chhattisgarh.
2. Rajesh Lalwani S/o Thawar Das Lalwani Aged About 40 Years Address Ambika Traders/ Ambika General Store, Sharda, Talkies Near Marwadi, School, Durg Tahsil And District Durg Chhattisgarh.

---- Applicants

Versus

1. Roopchand Jain S/o Late Gulabchand Jain Aged About 66 Years R/o Vidhya Vihar, Padmnabhpur, Durg District Durg Chhattisgarh.
2. State Of Chhattisgarh Through District Magistrate, Durg District Durg Chhattisgarh.

---- Respondents

For Applicants	:	Mr. Shrawan Agrawal, Adv.
For Respondent	:	Mr. Goutam Khetrapal, Adv.

Hon'ble Smt. Justice Rajani Dubey

C.A.V. Order

24.10.2019

1. The applicants have preferred this revision against the judgment dated 28.02.2019, passed by the Third Additional Sessions Judge, Durg (C.G.) in Criminal Appeal No. 302/2018 whereby the learned Appellate Court dismissed the appeal of accused arising out of judgment dated 10.10.2018 passed in Complaint Case No. 10247/2015 by the learned Judicial Magistrate First Class, Durg in which the learned trial Court convicted the applicants/accused under Section 138 of Negotiable Instrument Act and sentenced them to undergo S.I. for

one year and compensation of Rs. 5,00,000/- (Rs. Five Lakhs) with default stipulation.

2. Brief facts of the case are that complainant filed a complaint case against the accused persons under Section 138 of Negotiable Instrument Act on account of dishonor of cheque for Rs. 3,00,000/- (Rs. Three lakhs). According to pleading of the complainant, on the request of accused/ applicants, he had transferred Rs. 3,00,000/- (Rs. Three lakhs) by RTGS on the assurance that same would be returned within three months. On 28.09.2015. accused/applicant No. 2 gave a cheque No. 130586 of his bank Oriental Bank of Commerce at the A/c of applicant No. 1, which was dishonored on account of insufficient funds. Therefore, complainant sent legal notice and, thereafter, filed complaint before learned trial Court.

3. The learned trial Court after hearing both the parties and looking to the oral and documentary evidence, convicted the accused under Section 138 of Negotiable Instrument Act on 10.10.2015 as described above in para 1. Hence, this revision.

4. Learned counsel for the applicants submits that the judgments of the learned Appellate Court as well as trial Court are bad in law, therefore, both the judgments are not sustainable in the eye of law. According to evidence of complainant, it is clear that on 30.09.2014, Rs. 3,00,000/- (Rs. Three Lakhs) were given to Ambika General Stores & not to Ambika Traders. Accused has himself admitted in his cross-examination that Ashok Lalwani is the Proprietor of Ambika General Stores. He further submits that according to the complainant, he has sent a notice on 27.10.2015 but not specified about receipt of notice by the accused, therefore, no cause of action arise to file complaint against the accused. Both the Courts below committed illegality and violated the law of Negotiable Instrument Act as well as law of Cr.P.C and Evidence Act. Therefore, judgment of both the Courts below are liable to be set aside.

5. In support of his argument, he placed reliance on ***Baslingappa v. Mudibasappa [(2019) 5 SCC 418], Vijay v. Laxman & Another***

[(2013) 3 SCC 86], Hiten Sagar & Another [2001 STPL 7727 Bombay] & Ghanshyam Kisan Ukirade v. Sou. Suman Krishna Pawar and Another [(2010) 5 AIR Bom R 348].

6. On the other hand, learned counsel for the respondent has supported the judgment of both the Courts below and also placed on the decision of Supreme Court, in the matter of ***Sampelly Satyanarayana Rao [(2016) 10 SCC 458], Bir Singh v. Mukesh Kumar [(2019) 4 SCC 197 & Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd. [(2014) 12 SCC 539].***

7. Heard learned counsel for the parties and perused the material on record including the impugned order.

8. Before the trial Court, it is not disputed that accused (applicant) signed the cheque and gave it to the complainant. In ***Sampelly Satyanarayana Rao (supra)*** Hon'ble Supreme Court relied upon the decision rendered in ***Rangappa v. Sri Mohan*** reported in ***[(2011) 1 SCC (Cri) 184]*** held as under.

> "In *Rangappa v. Sri Mohan,* this Court held that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can rely upon the material submitted by the complainant. However, mere statement of the accused may not be sufficient to rebut the said presumption. A post-dated cheque is a well-recognised mode of payment."

9. Hon'ble Supreme Court also held in the matter of ***Bir Singh (Supra)*** para 20 & 24 thereof read thus:-

> *"20. Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. The presumption under Section 139 of the Negotiable Instruments Act is a*

> *presumption of law, as distinguished from presumption of facts. Presumptions are rules of evidence and do not conflict with the presumption of innocence, which requires the prosecution to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact as held in Hiten P. Dalal.*
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> *24. In K. N. Beena v. Muniyappan, this Court held that in view of the provisions of Section 139 of the Negotiable Instruments Act read with Section 118 thereof, the Court had to presume that the cheque had been issued for discharging a debt or liability. The said presumption was rebuttable and could be rebutted by the accused by proving the contrary. But mere denial or rebuttal by the accused was not enough. The accused had to prove by cogent evidence that there was no debt or liability. This Court clearly held that the High Court had erroneously set aside the conviction, by proceeding on the basis that denials/averments in the reply of the accused were sufficient to shift the burden of proof on the complainant to prove that the cheque had been issued for discharge of a debt or a liability. This was an entirely erroneous approach. The accused had to prove in the trial by leading cogent evidence that there was no debt or liability."*

10. In the present case, applicant has denied of taking loan and his stand was that loan was given to his brother and he gave his signed

blank cheque for security of his brother's loan. Complainant deposited amount in the account of Ambika General Stores. Accused is not a proprietor of Ambika General Store but is the proprietor of Ambika Traders. Before Family Court accused filed additional documents and filed application under Section 391 of Cr.P.C. Learned Family Court rightly rejected the application of applicant.

11. Hon'ble Supreme Court held in ***Rangappa (Supra)*** para 23 thereof reads thus:-

> *23. We may now notice the judgment relied on by the learned counsel for the complainant i.e. judgment of this Court in <u>Kishan Rao v. Shankargauda</u>. This Court in the above case has examined Section 139 of the Act. In the above case, the only defence which was taken by the accused was that cheque was stolen by the appellant. The said defence was rejected by the trial Court. In paras 21 to 23, the following was laid down.*
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> *"21. In the present case, the trial Court as well as the appellate Court having found that cheque contained the signatures of the accused and it was given to the appellant to present in the Bank, the presumption under Section 139 was rightly raised which was not rebutted by the accused. The accused had not led any evidence to rebut the aforesaid presumption. The accused even did not come in the witness box to support his case. In the reply to the notice which was given by the appellant, the accused took the defence that the cheque was stolen by the appellant. The said defence was rejected by the trial Court after considering the evidence on record with regard to which no contrary view has also been expressed by the High Court.*
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> *22. Another judgment which needs to be looked*

into is <u>Rangappa v. Shri Mohan</u>. A three-Judge Bench of this Court had occasion to examine the presumption under Section 139 of the 1881 Act. This Court in the aforesaid case has held that in the even the accused is able to raise a probable defence which creates doubt with regard to the existence of a debt or liability, the presumption may fail. The following was laid down in paras 26 and 27.

26. In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.

27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in *the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof.*

23. No evidence was led by the accused. The defence taken in the reply to the notice that cheque was stolen having been rejected by the two courts below, we do not see any basis for the High Court coming to the conclusion that the accused has been successful in creating doubt in the mind of the Court with regard to the existence of the debt or liability. How the presumption under Section 139 can be rebutted on the evidence of PW 1 himself has not been explained by the High Court."

12. Learned trial Court as well as Appellate Court has found that cheque was given to the complainant but the execution of Section139 of the Act mandated a presumption that cheque was for the discharge of any debt or any other liability and accused persons have not rebutted this presumption, therefore, both the Courts did not succeed to rebut this presumption. Thus, judgment and findings of both the Courts below is proper and need not be interfered with.

13. Accordingly, the revision preferred by the applicants has no substance and it is liable to be and is hereby dismissed.

Sd/-

(Rajani Dubey)
JUDGE

Vijay Sahu