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HIGH COURT OF CHHATTISGARH, BILASPUR

Acquittal Appeal No.194 of 2009

Judgment Reserved on : 24.9.2019

Judgment Delivered on : 19.12.2019

Alok Tiwari, S/o Late Jainarayan Tiwari, aged about 33 years, R/o Near Shakti Temple, Pendra, District Bilaspur, Chhattisgarh

---- Appellant

versus

Raj Kumar Jain, S/o Late Komal Chand Jain, occupation Civil Contractor, aged about 45 years, R/o Vaibhav Garments, Below Jain Mandir, Pendra, District Bilaspur, Chhattisgarh

--- Respondent

For Appellant : Shri Yogendra Chaturvedi, Advocate
For Respondent : Shri Ashish Surana, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. The instant appeal has been preferred by the Complainant against the judgment dated 30.3.2009 passed by the Judicial Magistrate First Class, Pendra Road, District Bilaspur in Criminal Case No.491 of 2007, whereby the Respondent/accused has been acquitted of the charge framed under Section 138 of the Negotiable Instruments Act (henceforth 'the Act').
2. Facts of the case, in brief, are that the Appellant/Complainant filed a complaint case before the Judicial Magistrate First Class, Pendra Road, District Bilaspur. According to the case of the Complainant, he gave cash of Rs.60,000/- to the Respondent/accused and the Respondent/accused promised to repay the same in two installments. On 12.10.2006, the Respondent gave two post dated

cheques to the Appellant/Complainant, first cheque bearing No.073733 dated 23.10.2006 for Rs.30,000/- and the second cheque bearing No.073734 dated 23.11.2006 for Rs.30,000/-. On 23.11.2006, the Appellant submitted both the cheques in the bank. Both the cheques were dishonoured by the bank on 17.3.2007 on the ground of insufficient fund in the bank account of the Respondent/accused. The Appellant/Complainant sent a demand notice to the Respondent/accused, which he received on 16.4.2007. The Respondent did not pay the amount of demand to the Appellant within the stipulated period. Therefore, the complaint case was filed by the Appellant/Complainant.

3. Before the Judicial Magistrate First Class, the Appellant/Complainant examined himself only. In the statement recorded under Section 313 of the Code of Criminal Procedure, the Respondent/accused denied the guilt. In his defence, he examined 3 witnesses, namely, Branch Manager Vijay Narayan Mishra (DW1), Vikas Jain (DW2) and Kriparam (DW3).
4. On completion of the trial, vide the impugned judgment, the Judicial Magistrate First Class acquitted the Respondent/accused of the charge framed under Section 138 of the Act on the grounds that (i) the complaint was filed with a delay of 1 day, (ii) the Appellant/Complainant failed to establish that the Respondent/accused had borrowed any money from him and (iii) it was also not established that the Respondent had given the said cheques to the Appellant for discharge of any liability. Hence, this appeal by the Complainant.
5. Learned Counsel appearing for the Appellant/Complainant

submitted that as per the law, presumption of legal debt is always in favour of the holder of the cheques. The Trial Court has committed a grave error of law in dismissing the complaint case filed by the Complainant on the ground that the Complainant has failed to prove that the cheques were given by the Respondent in discharge of legal debt or liability. From the evidence on record, it is well established that the cheques were given by the Respondent/accused in discharge of the legal debt. Therefore, the finding of the Trial Court in this regard is perverse and bad in law. It was further submitted that the Trial Court has miscalculated the period of limitation prescribed under Section 142 of the Act.

6. Learned Counsel appearing for the Respondent/accused submitted that though initially presumption as provided under Section 139 of the Act is in favour of the Appellant/Complainant, the said presumption can be rebutted by adducing evidence and the onus on the Respondent/accused is not as heavy as that of the prosecution. However, for rebutting such presumption, what is needed is to raise a probable defence, which the Respondent/accused was able to rebut by examining 3 witnesses and produce necessary documents. It was further submitted that it is settled law that if two reasonable conclusions can be reached on the basis of the evidence on record, the Appellate Court should not disturb the finding of the Trial Court.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. According to the case of the Appellant/Complainant, he gave cash of Rs.60,000/- to the Respondent/accused and thereafter to

discharge his liability the cheques in question were given by the Respondent/accused. On what date the sum of Rs.60,000/- was given by the Appellant/Complainant to the Respondent/accused, the Complainant has not been able to state. The Complainant has also admitted the fact that he had also not obtained any receipt in this regard. According to the Complainant, the Respondent had given him both the aforesaid cheques on 12.10.2006. But, according to Vikas Jain (DW2), earlier the Complainant was engaged with this witness as a partner in the profession of contractorship and this witness had constructed a premises of police station in Gaurela. At that time, this witness did not have sufficient money and, therefore, on his request, the Respondent, who is an uncle of this witness, had issued two cheques in favour of the Complainant as a guarantor. According to this witness, in this regard, on 23.9.2006, a document Ex.D1 was executed by the Complainant. From perusal of Ex.D1, it reveals that both cheques No.073733 and No.073734 for Rs.30,000/- each were received by the Complainant on 23.9.2006 for the work of aforesaid police station premises. In his Court statement also, the Complainant has admitted the fact that Ex.D1 was written by him. If the cash of Rs.60,000/- was given by the Complainant to the Respondent, in these circumstances, why in Ex.D1 the Complainant recorded that he received the aforesaid two cheques against the work of premises of the police station. Thus, a serious doubt arises whether the Complainant had given cash of Rs.60,000/- to the Respondent or not. Therefore, the finding of the Trial Court is in accordance with the evidence available on record. It is settled law that if two reasonable conclusions are possible on the basis of the evidence available on record, the Appellate Court should not

disturb the finding recorded by the Trial Court.

- 9.** From the aforesaid discussion, I do not find any merit in the instant appeal. There are two possible views in this case and, therefore, I do not see any scope to interfere with the finding of the Trial Court.
- 10.** Consequently, the appeal is dismissed.
- 11.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE