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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 17-6.2019

Judgment delivered on 26.06.2019

ACQA No. 84 of 2012

- Associate Automobiles Bhilai through Proprietor Ajay Dalmiya s/o. Madan Dalmiya, aged about 42 years, r/o. 248/250, Industrial area, Nahar Road, Bhilai, PS Jamul, Tahsil and District Durg (CG).

---- Appellant/complainant

Versus

- Azad Alam s/o. Late Hanif Miyan, r/o. Shop No. 95, Subhash Market, Khurshipar, Zone 2, Bhllai, P.S. Khurshipar, Tahsil & District Durg (CG).

---- Respondent

For the appellant : Mr. B.P. Singh, Advocate
For the respondent : Mr. Uttam Pandey, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against judgment dated 15-2-2-12 passed by the Judicial Magistrate, First Class, Durg, (CG), in complaint case No. 960/2011, wherein the said Court acquitted the respondent for charge under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act 1881').

2. As per version of the appellant/complainant, respondent had to pay sum of Rs.1,10,000/- for repairs of Truck to appellant, in discharging liability he issued a cheque amounting to Rs.1,10,000/- on 16-11-2007. The cheque was placed for encashment before the

Central Bank of India, Bhilai Nagar, but same was dishonoured on account of insufficient fund. A notice was issued by the appellant to respondent for payment of sum and even notice the amount was not paid, therefore, complaint was filed. After hearing both sides, the trial Court acquitted the respondent as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) Respondent admitted that he signed in the cheque, therefore, it should be presumed that cheque was issued to discharge liability.

(ii) The trial Court opined that the amount was to be paid for repair of the Truck bearing registration No. CG-04-C-1962 but total amount of repair to the tune of Rs.2,96,517/- was not mentioned in the notice, therefore, it is not possible that vehicle was handed over to respondent without payment of entire sum.

(iii) Finding of the trial court is erroneous that cheque was issued for discharge of liability, therefore, finding of the trial Court is liable to be set-aside.

4. On the other hand, learned counsel for the respondent submits that finding of the trial Court is based on proper marshaling of the evidence which is not liable to be interfered with while invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. Appellant adduced evidence of PW/1 Ajay Dalmiya and PW/2 Vibhar Thakur who is Assistant Manager of Central Bank of India. Appellant deposed before the trial court that he repaired the Truck of the respondent bearing registration No. CG-04-C-1962 and respondent issued a cheque of Rs.1,10,000/- in his favour for repair of the said truck. The cheque was presented before the Bank which was dishonoured and a notice was given to the respondent but he did not return the amount that is why complaint was filed.

7. PW/2 Vibhakar Thakur who is Assistant Manager of Central Bank of India, deposed that cheque was dishonourd on account of insufficient fund in the account of the respondent.

8. For determination of issue, provisions of Section 118 of the Act, 1881 are relevant which may be read as under:-

> **"118. Presumptions as to negotiable instruments** – Until the contrary is proved, the following presumptions shall be made:-
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> (a) **of consideration** – that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, 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 endorsements** – that the endorsements 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 or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

9. As per Section 139 of the Act, 1881, statutory presumption that the cheque issued for discharge, in whole or in part, of any debt or other liability, the presumption is rebuttable but in the present case, the respondent did not appear before the trial Court to rebut the presumption. Therefore, it is clearly established that the respondent has not discharged his liability towards the cheque amount. It is proved that the cheque amounting to Rs.1,10,000/- was issued to the appellant by the respondent and the same was dishonoured as per provisions of Section 138 of the Act. Mischief of the respondent falls under Section 138 of the Act. Argument advanced on behalf of the respondent is not sustainable and the finding arrived at by the appellate court is not sustainable and the same is hereby set aside.

10. Accordingly, the appeal is allowed reversing the judgment of acquittal passed by the appellate Court. The respondent is convicted for the offence under Section 138 of the Act 1881 and awarded sentence of fine to the tune of Rs.1,50,000/- (Rupees One lakh fifty thousand only). The trial Court to take all the steps for recovery. If the amount is not deposited within two months, then interest of 9% shall be leviable on the amount of Rs.1,50,000/-. Upon depositing the entire amount, the whole amount shall be paid to the appellant against the liability of the respondent.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju