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HIGH COURT OF CHHATTISGARH, BILASPUR

Acquittal Appeal No.203 of 2017

Judgment Reserved on : 26.9.2019

Judgment Delivered on : 19.12.2019

Bali Singh, S/o Shivji Singh, aged about 36 years, R/o Village Bitangipali,
Police Station Basna, Civil and Revenue District Mahasamund, Chhattisgarh

---- Appellant

versus

Kapil Patel, S/o Bhanwarsay, aged about 52 years, R/o Village Jamdi, Police
Station Basna, Civil and Revenue District Mahasamund, Chhattisgarh

--- Respondent

For Appellant : Shri Hemant Kesharwani and Shri Sunil Verma,
Advocates

For Respondent : Shri Anshul Tiwari, Advocate on behalf of Shri Manoj
Paranjpe, 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 22.5.2017 passed by the Judicial Magistrate First Class, Basna, District Mahasamund in Complaint Case No.347 of 2015, 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 a complaint case was filed by the Appellant/Complainant before the Judicial Magistrate First Class. According to the complaint case, the Respondent/accused had mortgaged a land with the Complainant and borrowed a sum of Rs.1,00,000/- from him against the said mortgaged property. Later on, the Respondent agreed to sell the said mortgaged land to

the Complainant for a consideration of total Rs.4,85,000/-. The Respondent received the remaining amount of consideration of Rs.3,85,000/- from the Complainant in cash. But, later on, he refused to sell the the said mortgaged land to the Complainant. Thereafter, on 7.8.2015, the Respondent gave a cheque No.970163 for Rs.4,85,000/- as a refund to the Appellant/Complainant. On 7.8.2015 itself, the Appellant submitted the said cheque in the bank, but, due to insufficient fund in the bank account of the Respondent, the cheque was dishonoured. On 24.8.2015, the Appellant sent a legal notice to the Respondent for demand of the said money. The notice was received to the Respondent on 26.8.2015. the Respondent did not give him the requisite amount within the stipulated period. Therefore, the Appellant filed the complaint case.

3. The Complainant examined himself and one other witness, namely, Dipanshu Shankar Sahu, Deputy Manager of Punjab National Bank, Basna. In the statement recorded under Section 313 of the Code of Criminal Procedure, the Respondent/accused denied the guilt. No witness has been examined in his defence.
4. Before the Trial Court, it was the defence of the Respondent/accused that some money transaction was existing between his wife and the Appellant and his wife and in this regard itself, the Respondent/accused had issued a blank cheque in favour of the Appellant and his wife. The Respondent had not received any money from the Appellant and thus, the Appellant has misused the said blank cheque.
5. 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 ground that it was not established that the Respondent had given the aforesaid cheque to the Appellant for discharge of any debt or liability. Hence, this appeal by the Appellant/Complainant.

6. Learned Counsel appearing for the Appellant/Complainant submitted that there is sufficient evidence available on record on the basis of which it can well be established that the said cheque was issued by the Respondent with his signature, but the cheque was dishonoured. It can also be established that even after service of the notice to the Respondent, he did not give reply. Thus, the a presumption under Section 139 of the Act, which is in favour of the Complainant, has not been duly rebutted by the Respondent/accused. Therefore, the judgment of acquittal passed by the Trial Court is not in accordance with law.
7. Learned Counsel appearing for the Respondent/accused supported the impugned judgment and submitted that the Respondent has duly rebutted the presumption under Section 139 of the Act. It was further submitted that according to the Complainant, a sum of Rs.4,85,000/- was given by the Appellant/Complainant to the Respondent, but when did he give this amount to the Respondent has not been stated by the Appellant. There is no agreement or receipt available on record in this regard. The Appellant himself has admitted that he does the work of a driver and earns Rs.10,000/- to Rs.12,000/- per month. In these circumstances, the Appellant has not been able to establish that from where he arranged the said sum of Rs.4,85,000/- and gave the same to the Respondent and this amount was available in the account of the Appellant, there is no

documentary evidence available on record. The concerned cheque was issued in the names of the Complainant and his wife Bindu Singh. If the amount of Rs.4,85,000/- was received by the Respondent from the Appellant/Complainant then the cheque would have also been issued by the Respondent in favour of the Appellant only. Thus, the defence of the Respondent that a money transaction was existing between his wife and the Appellant and his wife and the Respondent had issued the said cheque as a guarantor is established and accordingly, the Respondent has duly rebutted the presumption under Section 139 of the Act. Hence, the finding of the Trial Court is in accordance with the evidence available on record.

8. I have heard Learned Counsel appearing for the parties and perused the record with due care.
9. According to the case of the Appellant/Complainant, he had given money to the Respondent/accused in two installments. The Appellant gave a sum of Rs.1,00,000/- in April, 2014 and a land of the Respondent was mortgaged with the Appellant/Complainant by the Respondent in this regard and a stamp paper was also recorded in this regard. But, that stamp paper has not been produced before the Trial Court by the Appellant/Complainant. According to the Complainant, in January, 2015, the Respondent agreed to sell the said mortgaged land to the Appellant for a total consideration of Rs.4,85,000/- and the Respondent received the remaining amount of Rs.3,85,000/-. But, at that time, no written agreement was recorded in this regard. Why any written agreement was not recorded or why any receipt was not obtained by the Appellant/Complainant from the Respondent in this regard

has not been stated by the Appellant. The Appellant has also admitted that when the Respondent refused to register the mortgaged land in favour of the Appellant, he did not give him any legal notice nor did he file any suit for specific performance of the contract. The Appellant has also admitted that his wife is Bindu Singh. She had purchased a land from the wife of the Respondent, namely, Sukhmoti. Though the Appellant has denied the fact that any money transaction was existing with the wife of the Respondent, in the cheque in question (Ex.P1) why the name of the wife of the Appellant was mentioned along with the name of the Appellant, has not been explained by the Appellant. From perusal of the cheque (Ex.P1), it reveals that it contains signature of the Respondent, but the remaining entries of the cheque are not made by the Respondent himself. In these circumstances, the defence of the Respondent/accused appears to be genuine that he had given a blank cheque. Thus, it is not established that the said cheque was given by the Respondent for discharge of any legal debt or liability. Therefore, the finding of the Trial Court in this regard is proper and in accordance with the evidence available on record. The Respondent has duly rebutted the presumption under Section 139 of the Act.

- 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