

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 4th July, 2019

Date of Decision: 31st July, 2019

+

CRL.REV.P. 82/2013

M/S JAGE RAM KARAN SINGH & ANR ...Petitioners

Through: Mr. Ajay Kumar Pipaniya &
Ms. Mahima Choudhary,
Advocates

versus

STATE & ANR.

...Respondents

Through: Mr. Ashish Dutta, APP for
the State.
Ms. Urvashi Bhatia,
Advocate for respondent
No.2 with respondent No.2
in person

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

1. Petitioners have assailed the order dated 05.12.2012 (hereinafter referred to as the 'impugned order') passed by the Additional Sessions Judge, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Appellate Court') in Crl. Appeal No.57/2012, whereby the respondent No.2 was acquitted for the offence under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act', in short) and the judgment of conviction dated 11.07.2012 and order on sentence dated 17.07.2012 passed by the Metropolitan Magistrate,

Tis Hazari Courts, Delhi (hereinafter referred to as the 'Trial Court') in CC No.2540/10 were set aside. A prayer has been made to set aside the said impugned order.

2. As per the allegations of the petitioners, the respondent No.2, in discharge of the liability for the goods sold to him in the year 2005, had firstly issued a cheque bearing No.902041, for an amount of Rs.3,24,000/- in favour of the petitioners on 03.01.2009 and the said cheque was dishonoured, on presentation, with the remarks – "insufficient funds."
3. Thereafter, in the process of settlement with respect to the afore-said dishonoured cheque dated 03.01.2009, the respondent No.2 made a cash payment of Rs.5,000/- and issued the alleged cheque bearing No.902042 dated 12.06.2009 for an amount of Rs. 3,19,000/-, to the petitioners, which also got dishonoured for want of sufficiency of funds when presented for encashment. Thus, this was the second time when a cheque was issued by the respondent No.2 to discharge his liability towards the goods received by him from the petitioners in the year 2005 and the same got dishonoured.
4. Thereafter, on 23.09.2009, the petitioners sent a legal notice to the respondent No.2. However, despite the receipt of the said legal notice, the respondent No.2 did not make the payment, and hence a complaint under Section 138 of the NI Act was filed by the petitioners.
5. The Trial Court, after hearing both the parties, vide judgment dated

11.07.2012 convicted the respondent No.2 for committing the offence under Section 138 of the NI Act.

6. The Trial Court, vide its judgment dated 11.07.2012, observed that the respondent No.2 had admitted his signatures on the cheque as well as the issuance of the cheque to the petitioner No.2. However, it was the stand of respondent No.2 that the said cheque was handed over to the petitioner No.2 for the purpose of opening of an account and not against the discharge of any liability. In this regard, the petitioner no.2 was cross-examined, but no defence evidence was led by the respondent No.2. The Trial Court held that the cross-examination of the petitioner No.2 was unimpeached and the respondent No.2 had failed to establish that his bank account was opened by the petitioner No.2. Further, it was held by the Trial Court that once the signatures are admitted on the cheque, existence of legally enforceable debt or liability has to be presumed and further, as the respondent No. 2 had failed to establish the possession of the cheque with the petitioner No. 2, the presumption had been raised about the existence of legally enforceable liability and accordingly, the respondent No. 2 was held guilty.
7. Subsequently, the Trial Court, vide order dated 17.07.2012, sentenced the respondent No.2 to undergo simple imprisonment for 6 months, together with a fine of Rs.6,38,000/- under the first proviso to Section 143(1) of the NI Act, and in default of which the respondent No.2 was to undergo simple imprisonment for one

month. The Trial Court also passed a direction that, out of the aforesaid fine, Rs. 4,38,000/- has to be given to the petitioner No.2 as compensation under Section 357(1) of the Code of Criminal Procedure, 1973 ('Cr.P.C.', in short) and the rest of the amount was directed to be deposited with the State.

8. Aggrieved, the respondent No.2 filed an appeal bearing No. 57/2012 before the Appellate Court and challenged the aforementioned judgment of conviction and order on sentence passed by the Trial Court.
9. The Appellate Court, vide order dated 05.12.2012, allowed the appeal of the respondent No.2 and set aside the judgment dated 11.07.2012 and the order on sentence dated 17.07.2012 passed by the Trial Court, on the ground that the cheque in question was issued in discharge of time-barred debts, which does not come within the purview of legally enforceable debt as contemplated under Section 138 of the NI Act.
10. The Appellate Court, in the impugned order dated 05.12.2012, observed that the cause of action to enforce the liability against the respondent No.2 remained in existence up to July 2008, whereas the cheque in question had been issued on 12.06.2009. Although, the Appellate Court agreed with the observation made by the Trial Court that once signatures are admitted on the cheque, existence of legally enforceable debt or liability has to be presumed, but observed that the said presumption is rebuttable and in the instant case, the respondent No.2 has been able to rebut the said

presumption by showing that the liability for payment against the goods supplied arose in July 2005 and the limitation to file the case on the said liability expired in July 2008. Further, the Appellate Court held that if an accused is able to raise a probable defence, which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail, as per the language of Section 139 of the NI Act. Accordingly, the Appellate Court, following the ratio laid down in the judgments titled as ***Rangappa v. S. Mohan***, (2010) 11 SCC (441), ***Vijay Polymers Pvt. Ltd. & Anr. v. Vinnay Aggarwal***, 2009 (110) DRJ 592 and ***Kamalaksha Laxman Prabhu v. S.G. Mayekar***, 2009 (1) DCR 426 allowed the appeal filed by the respondent No.2 and set aside the judgment of conviction and the order on sentence passed by the Trial Court.

11. Aggrieved by the aforesaid impugned order passed by the Appellate Court, the petitioners have preferred the present revision petition.
12. I have given my thoughtful consideration to the submissions of the learned counsel for the parties and have also gone through the written submissions filed by them as well as the judgments relied upon by them.
13. It is contented by the learned counsel for the petitioners that the Appellate Court had failed to appreciate the fact that where the accused has not disputed his signature on the dishonoured cheque in question, it constitutes an agreement and/or promise by the debtor to pay the time-barred debt.

14. To buttress her arguments, the learned counsel for the petitioners has relied upon the judgment of the Karnataka High Court, titled as *Narasimha Rao v. Venkataram*, 2007 Cri. L.J. 583 (Kar).
15. It is also contended by the learned counsel for the petitioners that the Appellate Court has failed to appreciate the fact that when the cheque is issued in respect of a debt, which is time-barred, such issuance of cheque would re-validate the debt and the consequent liability on the part of the drawer of the cheque. In this regard, the learned counsel has relied upon the judgment of the Andhra Pradesh High Court in Criminal Appeal No.490/1999, titled as *V. Satyanarayana Raju v. G.B. Gangadhara Reddy & Anr.*, decided on 09.08.2007.
16. The learned counsel for the petitioners vehemently contended that the Appellate Court had misinterpreted Section 139 of the NI Act and ignored the ratio laid down by the Supreme Court in *Hiten P. Dalal vs. Bratindranath Banerjee*, (2001)6 SCC 16 and in *Rangappa vs. S. Mohan*, (supra).
17. It is also contended by the learned counsel for the petitioners that the impugned order acquitting the respondent No.2 on the ground of the cheque in question being issued in respect of a debt, barred by time is contrary to the evidence on record.
18. *Per contra*, the learned counsel for the respondent No.2 submitted that a cheque issued, in *lieu* of time-barred debt, does not come within the purview of Section 138 of the NI Act.

19. The learned counsel for the respondent No.2 further submitted that on the date of the alleged issuance of the said cheque, there was no existing legally enforceable debt or liability and that the petitioner No.2 had categorically stated that the cheque dated 12.06.2009 was issued by the respondent No.2 for discharging the liability against the two bills bearing No. 5419 dated 14.06.2005 and No.5442 dated 26.07.2005 respectively, which *prima facie* reflects that the said cheque in question was issued for a time-barred debt.
20. To buttress her arguments further, the learned counsel has relied upon the order dated 10.09.2001 passed by the Supreme Court in the case titled as *Sasseriyl Joseph v. Devassia* in SLP (Crl.) 1785/2001, the judgment passed by this Court in the case titled as *Vijay Polymers Pvt. Ltd. & Anr. v. Vinnay Aggarwal* (supra) and the judgment of the Bombay High Court in the case titled as *KamalakshaLaxmanPrabhu v. S.G. Mayekar* (supra).
21. The learned counsel for the respondent No.2 vehemently contended that the petitioners had based and substantiated their case on the afore-mentioned bills bearing nos. 5419 and 5442 in their complaint, but neither the petitioners had placed on record the afore-mentioned bills nor there is any mentioning of the consideration of the said bills in the complaint.
22. It is lastly contended by the learned counsel for the respondent No.2 that the petitioners has failed to place on record any evidence to show that any demand of payment was raised against the respondent No.2 during the duration of 4 years, i.e. from the date

of the transaction till the alleged issuance of the cheque in question.

23. In light of the above submissions of the learned counsel for the parties, it would be appropriate and necessary to first reproduce the provisions of Section 138 of the NI Act, which read as under:

“138. Dishonour of cheque for insufficiency, etc., of funds in the account —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from

the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. — For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.”

24. At this juncture, it would also be appropriate to take note of Section 18 of the Limitation Act, 1963 which deals with the effect of acknowledgement which reads as under: -

“18. Effect of acknowledgment in writing.

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”

25. A bare perusal of the aforesaid provision clearly goes on to show that for analyzing the limitation of a liability beyond a period of three years, the acknowledgment, if any, must be there before the period of limitation is over, which is not the case in hand.
26. Further, it has been held time and again by the Apex Court as well as by the various High Courts that mere giving of a cheque, without anything more, will not revive a time-barred debt, because cheque has to be given, as contemplated by the explanatory, in discharge of a legally enforceable debt. In this regard, it may be relevant to take note of the order dated 10.9.2001 relied upon by the learned counsel for the respondent No.2 titled ***Sasseriyl Joseph v. Devassia*** (*supra*) wherein, in a similar case, it has been held by the Supreme Court that, a cheque which has been issued by the accused for a due which was barred by limitation, the penal provision under Section 138 of the NI Act is not attracted. The

relevant observations made in this regard in the aforesaid judgment are reproduced hereunder: -

“We have heard learned counsel for the petitioner. We have perused the judgment of the High Court of Kerala in Criminal Appeal No. 161 of 1994 confirming the judgment/order of acquittal passed by the Addl. Sessions Judge, Thalassery in Criminal Appeal No. 212 of 1992 holding inter alia that the cheque in question having been issued by the accused for due which was barred by limitation the penal provision under Section 138 of the Negotiable Instruments Act is not attracted in the case.

On the facts of the case as available on the records and the clear and unambiguous provision in the explanation to Section 138 of the Negotiable Instruments Act the judgment of the lower appellate Court as confirmed by the High Court is unassailed.

Therefore, the special leave petition is dismissed.”

27. In ***Vijay Polymers Pvt. Ltd. & Anr. v. Vinnay Aggarwal*** (*supra*), relying upon the judgment of the Supreme Court in ***Sasseriyl Joseph*** (*supra*), it has been observed that, cheques issued for a time-barred debt would not fall within the definition of ‘legally enforceable debt’, which is the essential requirement for a complaint under Section 138 of the NI Act; the extended meaning of debt or liability has been explained in the Explanation to the Section which means a legally enforceable debt or liability.
28. Useful reference may also be made to the case titled ***Prajan Kumar Jain v. Ravi Malhotra***, 2009 SCC Online Del 3368,

wherein, like the case in hand, it has been held by another Coordinate Bench of this Court that, an acknowledgment to be encompassed within the ambit of Section 18 of the Limitation Act has to be an acknowledgment in writing as also within the prescribed period of limitation. These are the twin requirements which have to be fulfilled in order to be a valid acknowledgment under Section 18 of the Limitation Act. Relevant portion of the aforesaid judgment is reproduced hereunder:

“10....This acknowledgment even as per the complaint was much after the statutory period of three years which is the prescribed period of limitation for the recovery of an outstanding amount. An acknowledgment to be encompassed within the ambit of Section 18 of the Limitation Act has to be an acknowledgment in writing as also within the prescribed period of limitation. These are the twin requirements which have to be fulfilled in order to be a valid acknowledgment under Section 18 of the Limitation Act which is admittedly not so in the instant case. In this case this acknowledgment to pay the balance amount was in terms of the settlement dated 26.1.2005 i.e. much after the statutory period of three years; it also does not speak of the acknowledgement being in writing. It was thus not a valid acknowledgment.”

29. A perusal of the record reveals that, in the instant case, the last business transaction between the parties took place on 26.7.2005 and thereafter, no other business transaction took place between the parties. The Appellate Court has, hence, rightly held that in these circumstances, the cause of action to enforce the said

liability, as per law, against the respondent No.2 remained in existence only up to July 2008.

30. Further, it has also been correctly held by the Appellate Court that the Trial Court has although acknowledged the handwritten copy of the account statement, which had not been disputed by the respondent No. 2, to arrive at the conclusion that the cheque dated 12.6.2009, was not against the time-barred liability, but a perusal of the material placed on record reveals that the said document pertains to the account being maintained by the respondent No.2 (appellant therein) and is about the balance which got forwarded on 1.4.2009 and cash entry of Rs.5000/-, dated 2.6.2009, and even if the said document is deemed to be correct, the said payment of Rs.5000/- on 2.6.2009 does not extend the period of limitation since the cash payment was made after the expiry of the period of limitation. Further, there is no acknowledgment on record, if any, made by respondent No.2 at any point of time during the period of limitation regarding the liability against the goods supplied, therefore, it has been rightly held by the Appellate Court that the period of limitation also cannot be extended after July 2008. The cheque dated 3.1.2009 relied upon by the petitioners is also after the expiry of period of limitation, therefore, again cannot bring the issue of liability within the time frame. Though, it is correct that once the signatures are admitted on the cheque, existence of legally enforceable debt or liability has to be presumed, but it is to be noted that the said presumption is rebuttable and in the instant matter, the respondent No.2 has been able to rebut the said

presumption by showing that the liability for payment against the goods supplied arose in July 2005 and the limitation to file the case on the said liability expired in July 2008.

31. Further, the law is no longer *res integra* in this regard. It is well-settled that the presumption, which is contained in Section 139 of the NI Act, only raises the presumption that the cheque has been issued for the discharge of a debt or liability and existence of legally recoverable debt is not a matter of presumption, as per the aforesaid provisions of law.
32. The Supreme Court, in ***Krishna Janardhan Bhat vs. Dattatraya G. Hedge***, (2008) 4 SCC 54, has elucidated the law in this regard and has held as under:

“30. The proviso appended to the said section provides for compliance of legal requirements before a complaint petition can be acted upon by a court of law. Section 139 of the Act merely raises a presumption in regard to the second aspect of the matter. Existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability.

...

43. But, we may at the same time notice the development of law in this area in some jurisdictions.

44. The presumption of innocence is a human right. [See Narender Singh and Anr. v. State of M.P.: 2004CriLJ2842, Ranjitsing Brahmajeetsing Sharma

v. State of Maharashtra and Anr. 2005CriLJ2533 and Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director 2007CriLJ304] Article 6(2) of the European Convention on Human Rights provides: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law". Although India is not bound by the aforementioned Convention and as such it may not be necessary like the countries forming European countries to bring common law into land with the Convention, a balancing of the accused rights and the interest of the society is required to be taken into consideration. In India, however, subject to the statutory interdicts, the said principle forms the basis of criminal jurisprudence. For the aforementioned purpose the nature of the offence, seriousness as also gravity thereof may be taken into consideration. The courts must be on guard to see that merely on the application of presumption as contemplated under Section 139 of the Negotiable Instruments Act, the same may not lead to injustice or mistaken conviction. It is for the aforementioned reasons that we have taken into consideration the decisions operating in the field where the difficulty of proving a negative has been emphasized. It is not suggested that a negative can never be proved but there are cases where such difficulties are faced by the accused e.g., honest and reasonable mistake of fact.

In a recent Article "The Presumption of Innocence and Reverse Burdens: A Balancing Duty" published in [2007] C.L.J. (March Part) 142 it has been stated:

"In determining whether a reverse burden is compatible with the presumption of innocence regard should also be had to the pragmatics of proof. How difficult would it be for the

prosecution to prove guilt without the reverse burden? How easily could an innocent defendant discharge the reverse burden? But courts will not allow these pragmatic considerations to override the legitimate rights of the defendant. Pragmatism will have greater sway where the reverse burden would not pose the risk of great injustice - where the offence is not too serious or the reverse burden only concerns a matter incidental to guilt. And greater weight will be given to prosecutorial efficiency in the regulatory environment.”

45. We are not oblivious of the fact that the said provision has been inserted to regulate the growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters and to safeguard the faith of the creditor in the drawer of the cheque which is essential to the economic life of a developing country like India. This, however, shall not mean that the courts shall put a blind eye to the ground realities.

Statute mandates raising of presumption but it stops at that. It does not say how presumption drawn should be held to have rebutted. Other important principles of legal jurisprudence, namely presumption of innocence as human rights and the doctrine of reverse burden introduced by Section 139 should be delicately balanced. Such balancing acts, indisputably would largely depend upon the factual matrix of each case, the materials brought on record and having regard to legal principles governing the same.”

33. Therefore, I do not agree with the contention raised by the learned counsel for the petitioners that the Appellate Court has misinterpreted Section 139 of the NI Act. The Appellate Court has rightly held that the alleged responsibility of the respondent No.2, if any, had already become time-barred as on the date of the issuance of cheque and, therefore, the same cannot be said to be in discharge of a legally enforceable debt or liability. The judgments relied upon by the petitioners are of no help in view of the legal position and the law discussed hereinabove.
34. In my opinion, the view taken by the Appellate Court is reasonable and plausible. Accordingly, I have no hesitation to hold that there is no infirmity or flaw in the impugned order dated 05.12.2012 passed by the Additional Sessions Judge, Tis Hazari Courts. Consequently, I do not find any merit in the petition and the same is accordingly dismissed.

CHANDER SHEKHAR, J.

JULY 31, 2019/tp