

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 03-02-2020

Delivered on 27-02-2020

ACQA No. 75 of 2010

- Gulab Singh Khatri S/o Bhoj Ram Khatri R/o Nathani Building
New Shanti Nagar, Raipur

---- Appellant

Versus

- Raghunandan Prasad Verma S/o Chhabi Lal Verma R/o
Behind Shitla Mandir Danganiay, Police Station Azad Chowk,
Raipur

---- Respondent

For Appellant : Mr. Y.C. Sharma, Advocate.

For respondent : Mr. Jitendra Gupta, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This acquittal appeal is preferred against the judgment dated 2-3-2005 passed by the Additional Chief Judicial Magistrate,, Raipur in criminal complaint case No. 3109 of 2002 filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act, 1881") wherein the said court acquitted the respondent for the said charge.

2. As per the appellant/complainant, he is the owner of one vehicle Tempo Trax bearing registration No. MP23-B /2112 and he entered into agreement with respondent for sale of the said vehicle for cash consideration of Rs.60,000/-. The respondent handed over a cheque bearing No. 18059 dated 6-3-2002 of Central Bank of India, Raipur in favour of the appellant. The appellant deposited the cheque for encashment of cheque on 20-5-2002 and thereafter it was informed to the appellant on 24-5-2002 vide memo dated 21-5-2002 that due to insufficiency of funds, the cheque is dishonoured. Appellant issued to legal notice to respondent on 27-5-2002 but no amount was paid that is why a complaint was filed which resulted into acquittal.

3. Learned counsel for the appellant submits as under:

- i) From the evidence of complainant Gulab Singh Khatri (PW/1) and documents Ex.P/1 to P/6, it is established that the cheque was drawn in his favour which was dishonoured, therefore, charge under Section 138 of the Negotiable Instruments Act, 1881 is made out.
- ii) The trial court has not evaluated the entire evidence in its true perspective, therefore, finding of the trial court is liable

to be set aside.

4. On the other hand, learned counsel for the respondent submits as under:

- i) Averment regarding delivery of vehicle is not mentioned in the complaint and cheque was issued for delivery of the vehicle but vehicle was not delivered and there is no acknowledgement regarding delivery of vehicle, therefore, there was no liability against the respondent.
- lii) No document of transfer form of the vehicle was signed by the appellant which shows that the vehicle was not delivered.
- iv) No acknowledgement regarding service of notice is filed before the trial court which shows that notice is not served to the respondent, therefore, finding of the trial court is not liable to be interfered

with.

5. I have heard counsel for the passed and perused the record of the trial court where judgment has been passed.

6. Admittedly, the cheque was drawn for consideration of vehicle which is Tempo Trax as mentioned above. Complainant Gulab Singh Khatri (PW/1) deposed (para 8) before the trial court that he has not signed in the transfer form of the vehicle because amount is not received by him. Though he deposed that vehicle is delivered to respondent, but respondent's witness namely Shiv Kumar (DW/1) denied delivery of the vehicle. Admittedly, vehicle was not transferred in the name of the respondent. Unless the vehicle is transferred and registered in the name of the respondent, the appellant is still owner of the vehicle. No acknowledgement of delivery of vehicle is produced and proved by the appellant before the trial court, therefore, delivery of vehicle to respondent is not proved and it is also not proved that the vehicle was transferred in the name of the respondent.

7. From the entire evidence, it appears that the appellant himself is the owner and possessor of the vehicle in question. Unless the vehicle is transferred, no liability can be fastened on the respondent, therefore, cheque which is issued in anticipation of delivery of the said vehicle, does not create any liability on the part of the respondent. The trial court after evaluating the entire evidence recorded finding that liability

on the part of the respondent is not established, therefore, charge under Section 138 of the Act, 1881 is not established. After re-assessing the entire evidence, this court has no reason to take a contrary view what is taken by the trial court.

8. Accordingly, the instant appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju