

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 09-01-2020

Delivered on 27-02-2020

ACQA No. 94 of 2016

- Sanjay Kumar Gupta S/o Shri B.R. Gupta Aged About 42 Years R/o Shitlapara, Tahsil and Police Station Kanker, District North Bastar Kanker, Chhattisgarh.

---- Appellant

Versus

- Ghanaram Sahu S/o Salikram Sahu Aged About 40 Years Caste Teli, R/o Shriram Nagar, Tahsil And Police Station Kanker, District North Bastar Kanker, Chhattisgarh.

---- Respondent

For Appellant : Mr. Prakash Tiwari and Mr. Santosh
Pandey, Advocates.
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 5-2-2016 passed by the Sessions Judge, North Bastar at Kanker in Criminal Appeal No. 27 of 2013 wherein the said court acquitted the respondent for charge under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act, 1881") reversing the judgment of Chief Judicial Magistrate, Kanker in Criminal Case No. 923 of 2011 dated 27-9-2013.

2. As per version of the appellant, both sides are well known to each other. On account of mutual relation appellant extended credit facility to the tune of Rs.7,00,000/- to the respondent on 15-5-2011. The respondent issued a cheque of Axis Bank, Branch Dhamtari dated 8-7-2011 in favour of the appellant for a sum of Rs.7,00,000/-. The cheque was placed before the Bank of India, Branch Kanker, but it was returned dishonoured due to insufficiency of funds vide written memo dated 9-7-2011. Appellant issued a notice to the respondent for payment of his money on 26-7-2011 through registered post which was duly served on the respondent on 28-7-2011. Despite receiving notice, respondent failed to pay the amount that is why complaint was filed. The trial court convicted the respondent but in appeal the said Sessions Court reversed the finding of the trial court and acquitted the respondent.

3. Learned counsel for the appellant submits as under:

- i) From the evidence of complainant Sanjay Gupta (PW/1), Branch Manager of Axis Bank, Priyadutt Panigrahi (PW/2) and PW/3 Shyamlal Sahu, it is established that respondent borrowed a sum of Rs.7,00,000/- from the appellant in presence of Shyamlal Sahu (PW/3)

and cheque was issued by the respondent in favour of appellant which was placed before the Bank and same was dishonoured as per version of Branch Manager Priyadutt Panigrahi (PW/2).

- ii) Two witnesses were adduced by the respondent namely DW/1 Manjit Singh Thakur and DW/2 Gnanendra Singh Thakur, but respondent Ghanaram Sahu did not enter into witness box to rebut the evidence adduced by the appellant side, therefore, version of the appellant is unrebutted.
- iii) Appellant is having turn over of Rs.20,00,000/- per month and as per his cross examination he advanced currency notes of 1000/-, 500/- and 100/- denomination. The entry is made in presence of the respondent. The complainant has proved his financial

status though income-tax return is not filed but the same is not relevant to decide the issue between the parties.

- iv) When notice is served to respondent for payment of loan amount after dishonouring of cheque, no reply was given by him, therefore, finding of the Sessions court is liable to be set aside and the respondent be convicted for offence under Section 138 of the Act, 1881.

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

- i) A blank cheque was given to the appellant by signing in black ink and no amount was mentioned in the said cheque at the time of delivery of the cheque because the same was blank cheque.
- ii) (DW/1) Manjit Singh Thakur deposed

that cheque was given for Rs.7,000/- and no income tax account and no cash account of the shop was produced before the trial court .

- iii) The appellant admitted that the amount was not filled up by the respondent but it is filled up by the appellant after receiving the blank cheque. The cheque was not issued on 8-7-2011 but same was given four years back from the said date.
- iv) Ex.D/2 is notice issued by the respondent to Ku. Rathi Dhruv, Manjeet Singh and appellant. Notice was issued on 15-2-2011 and after that relation between the parties was strained, therefore, question of giving Rs.7,00,000/- in the month of July 2011 does not arise.
- v) Appellant deposed before the trial court that one Milan Yadav was present at the

time of delivery of Rs.7,00,000/- but the said Milan Yadav is not examined before the trial court, therefore, finding of the Sessions Court is not liable to be interfered with.

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

6. The question for consideration of this court is whether cheque of Rs.7,00,000/- was drawn by the respondent in favour of the appellant for discharge of debt, whether the cheque deposited in Bank for clearance is returned dishonoured on account of insufficiency of fund in the account of the respondent and whether after legal notice respondent has not returned the amount of cheque to the appellant.

7. Appellant adduced evidence of himself (PW/1) Branch Manager, Axis Bank, Dhamtari, Priyadutt Panigrahi (PW/2) and Shyam Sahu (PW/3) and produced documents Ex.P/1 to P/4. Contrary to that, respondent side adduced evidence of Manjit Singh (DW/1) and Gnanendra Singh (DW/2) but did not produce any document. From the evidence of Sanjay Kumar Gupta (PW/1), it is clear that he advanced a sum of Rs.7,00,000/- to the respondent for construction of house and agricultural purpose and in discharge of that liability he had drawn a cheque in his favour. Shyam Sahu (PW/3) deposed that Rs.7,00,000/-

was advanced by the appellant to respondent. Appellant deposed (para 11) before the trial court that currency notes of Rs.1000/-, Rs.500/- and Rs.100/- were advanced to respondent. Complainant (PW/1) deposed (para 9) that though entry in cheque was made by him, but respondent signed after filing of the entry of cheque. As per version of this witness, respondent is economically sound and looking to his financial status, he advanced a sum to him. As per version of this witness (para 11) he is a Jeweller having turnover of Rs.20,000,00/- per month. In rebuttal, respondent did not enter into witness box. His witnesses deposed regarding borrowing some different amount, but their version is not acceptable in absence of version of respondent himself.

8. As per Section 139 of the Negotiable Instruments Act, 1881, It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in **section** 138 for the discharge, in whole or in part, of any debt or other liability.

Section 118 of the Act, 1881 reads as under:

“118 Presumptions as to negotiable instruments. —Until the contrary is proved, the following presumptions shall be made:—

(a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;

9. Presumption is rebuttal and respondent may prove that there was no debt to be discharged by him, but he himself did not enter into witness box. The respondent did not give reply to the notice issued to him as per Ex.P/3. It is not a case of respondent that he has not signed the cheque. A meaningful reading of the provisions of the Act, 1881 makes it ample clear that the person signed the cheque over to payee remains liable. Presumption will live, exist and survive and shall end only when contrary is proved by the accused/respondent.

10. True it is that no account register or income tax return was produced by the appellant, but when respondent himself has not

denied the borrowing of money and did not enter into witness box, presumption will not be rebuttable. If anything is done contrary to the provisions of Income Tax Act, the authorities of Income Tax Department can take notice of it. Again, any supportive document or account is corroborative piece of evidence. Corroboration is not a rule of law, but it is a rule of prudence and presumption under Section 139 of the Act, 1881 is rule of law and presumption has to be drawn by the court as per Section 139 of the Act, 1881. When legal presumption is available in favour of the appellant which is not rebutted, no corroboration is required to version of appellant by submitting income tax return. The matter related to income tax is issue between the Revenue and Assessee, therefore, non-filing of income tax return cannot be a solitary basis for rejecting the evidence of the appellant. From the evidence, it is not a case where source of income is not established. The amount was advanced on the basis of personal relation, therefore, preparation of other documents was not required under the law and cheque issued by the respondent is the best document for showing liability of the respondent.

11. On an overall assessment, it can be said that the finding of the Sessions Court is against weight of the evidence and same is not legal because it is contrary to the provisions of the Act, 1881. In view of the evidence of both sides, argument advanced on behalf of the

respondent is not acceptable and the act of the respondent falls within mischief of Section 138 of the Act, 1881.

12. Accordingly, the instant appeal is allowed. Finding of the Sessions Court is set aside. Respondent is convicted under Section 138 of the Negotiable Instruments Act, 1881. The date of issuance of cheque is 8-7-2011. Appellant is entitled to interest @ 6% per annum on the amount advanced by him. Accordingly, the respondent is sentenced to pay fine of Rs.10,50,000/- (Rupees ten lakhs and fifty thousand) for offence under Section 138 of the Act, 1881. The trial court shall make effort to liquidate the amount as per provisions of Cr.P.C. It is made clear that if respondent is sent to jail for non-recovery of amount, the payment of amount shall not be discharged because his detention in jail is a mode of recovery and same is not satisfaction of liability, therefore, his liability shall be discharged only when he pays the amount of Rs.10,50,000/-. It is directed that if the amount is not paid within fifteen days, the amount shall further carry interest @ 6% per annum in principle amount of Rs.7,00,000/- (Rupees seven lakhs) till realisation of the entire amount. The whole amount shall be paid to the appellant for discharge of liability.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju