NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 07-02-2020

Delivered on 27-02-2020

<u>ACQA No. 164 of 2009</u>

- Ravindra Kumar Yadav s/o. Purnvasi Yadav, 48 years, resident of Ward No. 1, Manendragarh, Police Station Manendragarh, Dist. Koriya, CG.

---- Appellant

Versus

- Smt. Kiran Devi w/o. Shri Sitaram 42 years, resident of Pouradhar, Police Station Bijuri, Dist. Anuppur (MP).

---- Respondent

For Appellant : Mr. Prafull N. Bharat, Advocate.

For respondent : Mr. Parag Kotecha, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

<u>CAV Judgment</u>

1. This acquittal appeal is preferred against the judgment dated 6-12-2007 passed by First Additional Sessions Judge, Manendragarh in Criminal Appeal No. 128 of 2006 wherein the said court reversed the finding of conviction and sentence dated 21-4-2005 passed by the Judicial Magistrate, Class-1, Manendragarh in Criminal Case No. 285 of 2002 for offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, “the Act, 1881”).

2. As per version of the appellant/complainant, husband of respondent namely Sitaram and respondent purchased two Trucks from appellant bearing registration No. MOL 9710 & CPO 7993. In lieu of the above said purchase they have given a cheque bearing No. 0003779 amounting to Rs.1,25,000/-. When the said cheque was presented for clearance in the Bank, the same was dishonoured due to insufficiency of fund. Appellant issued a notice to the respondent and her husband for payment of his money but the amount was not paid that is why complaint was filed under Section 138 of the Act, 1881. The trial court convicted the respondent but in appeal the said Sessions court acquitted the respondent contrary to factual matrix and legal aspect of the matter.

3. Learned counsel for the appellant submits as under:

i) From the evidence of complainant Ravindra Kumar (PW/1) and Branch Manager, State Bank of India, Manendragarh Ved Prakash Verma, (PW/2), it is established that cheque was drawn in favour of appellant for discharge of liability of consideration amount of the trucks which were purchased by the respondent and her husband.

ii) The respondent admitted in her statement recorded under Section 313 of Cr.P.C., that the cheque was issued in discharge of consideration amount of trucks which were purchased by the husband of the respondent , therefore, finding of the Sessions Court is liable to be set aside.

Iii) The said court has not evaluated the evidence in its true perspective, therefore, finding of the said court is liable to be set aside.

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

I) Appellant has not proved that the amount was not withdrawn from the account of respondent and her husband or her husband has not paid the amount, therefore, liability of the respondent is not proved.

(ii) Finding of the Sessions Court is not liable to be interfered with while invoking jurisdiction of the appeal.

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

6. The question for consideration of this court is whether the respondent had drawn cheque in favour of the appellant for discharge of debt which was deposited in Bank for clearance and it was returned unpaid on account of insufficiency of fund in the account of the respondent and whether after legal notice respondent did not pay the amount.

7. Appellant side adduced evidence of Ravindra Kumar Yadav (PW/1) and Ved Prakash Verma (PW/2) and produced documents Ex.P/1 to P/9). In rebuttal, Seetaram (DW/1) and Mohan Singh (DW/2) were adduced by the respondent side. From the evidence of witnesses of appellant side, it is established that cheque amounting to Rs.1,25,000/- was issued by the respondent in favour of appellant and it was dishonoured, therefore, notice was served to her but no amount was paid.

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 but respondent did not enter into witness box but she admitted in her statement recorded under section 313 of Cr.P.C.,that (answered to question No.4) she issued a cheque regarding consideration of purchase of trucks to the tune of Rs.1,25,000/-.. From the evidence of respondent side it is clear that

cheque was issued for discharge of liability, therefore, presumption under Section 139 of the Act, 1881 is not rebutted. From the record, it is not clear that any amount regarding the said cheque to the tune of Rs.1,25,000/- was withdrawn from the account of the respondent or her husband. When issuance of cheque for liability is admitted, respondent was under obligation to establish that the amount was paid to the appellant, but from the oral evidence or bank account, it is not proved that the amount is paid to the appellant. 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 best document for showing liability of the respondent. Sessions Court has not recorded any objective finding. The case is related to bank transaction, therefore, objective finding ought to have been recorded by the said court. In absence of objective finding, the view taken by the Sessions Court is against weight of the evidence and same is not legal and contrary to the provisions of the Act, 1881, therefore, 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.

10. 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 in the year 1997. Appellant is entitled to interest @ 6% per

annum, but since 23 years is past of the said transaction the respondent is sentenced to pay fine of Rs.2,50,000/- (Rupees two 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 her detention in jail is a mode of recovery and same is not satisfaction of liability, therefore, her liability shall be discharged only when she pays the amount of Rs. 2,50,000/-. It is directed that if the amount is not deposited within fifteen days the amount shall further carry interest @ 6% per annum in principle amount of Rs.1,25,000/- (Rupees one lakh and twenty-five thousand) till realisation of the entire amount. After recovery whole amount shall be paid to the appellant for discharge of liability.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju