

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 08.01.2020

Delivered on 27.02.2020

Acquittal Appeal No.421 of 2019

Santram Sahu, S/o. Shri Dasru Ram Sahu, aged about 65 years, R/o. Lodhipara Gudiyari, Raipur Tahsil & District Raipur (CG)

---- Appellant

Versus

Murlidhar Shrivastava, S/o. Shri Manmohan Shrivastava, aged about 44 years, R/o. Village Dataud, Post Kotetara, Police Station Jaijaipur, Tahsil Jaijaipur, District Janjgir- Champa (CG) 2nd Address: Hariom Kutir Niwas, Pahadi Chowk, Lodhipara, Near Janghel Health Club, Gudhiyari, Raipur, distt. Raipur (CG)

---Respondent

For the appellant : Shri Rajat Agrawal, Advocate

For the respondent : Smt. Mandavi Bharadwaj, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. The appeal is directed against judgment dated 22.11.2017 passed by Judicial Magistrate First Class, Raipur (Chhattisgarh) in Criminal Case No. 2622/2015 whereby the said Court acquitted the respondent for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act 1881').

2. As per the version of the appellant/complainant, on 27.5.2015 one cheque was given by the respondent/accused to

the appellant for a sum of Rs.2 lakh. The said cheque was presented in the Syndicate Bank, Main Branch Raipur from where endorsement was made and information was given to the appellant stating that there is insufficient fund on the account of the respondent. After the said dishonour of the cheque, the appellant sent a registered legal notice through his counsel on 18.9.2015. The notice was duly accepted by the respondent and thereafter the respondent issued fresh cheque in favour of the appellant on 20.9.2015 to the tune of Rs.2 lakh which was returned by the bank for the reason and description of insufficient fund. Again notice was issued to the respondent on 14.10.2015 after dishonour of the cheque on 09.10.2015 which was received by the respondent on 16.10.2015, but the amount was not paid and thereafter complaint was filed on 24.11.2015 which resulted into acquittal of the respondent.

3. Learned counsel for the appellant submits as under:

(i) From the evidence, charge under Section 138 of the Act, 1881 was proved against the respondent because issuance of the cheque was not disputed which was issued for valid transaction but the trial Court recorded finding contrary to the factual matrix and legal aspects of the matter.

(ii) The trial Court has not evaluated the evidence properly, therefore, finding of the trial Court is liable to be set aside and the respondent may be convicted.

4. On the other hand, learned counsel for the respondent submits that finding of the trial court is based on proper marshaling of the evidence, which is not liable to be interfered with.

5. I have heard learned counsel for the parties and perused the judgment impugned with record.

6. The first question for consideration before this Court is whether cheque for Rs.2 lakh was drawn by the respondent in favour of the appellant for discharge of debt, whether the cheque deposited in the bank for clearance was returned unpaid on account of insufficiency of fund in the account of the respondent and whether after legal notice the respondent has not returned the amount of cheque to the appellant.

7. The appellant side examined Santram Sahu (PW-1), Chief Manager, Karnataka Bank Ltd. Branch Fafadih Chouk, Raipur namely Santosh Kumar (PW-2) and Special Assistant, Syndicate Bank, Branch Ramsagarpara Raipur namely SK Agrawal (PW-3) and exhibited documents P/1 to P/15. The respondent side exhibited document D/1. Complainant Santram Sahu (PW-1)

deposed before the trial Court that the respondent borrowed sum of Rs.2 lakh on 30.12.2014 and he has assured that the amount shall be repaid by 15.5.2015. For discharging his liability, the respondent issued cheque bearing No.223661 of Karnataka Bank Ltd. Branch Fafadih Chouk, Raipur to the tune of Rs.2 lakh but the same was dishonoured on 18.9.2015. As per the version of this witness, he issued notice to the respondent and thereafter he again issued a cheque of Rs.2 lakh bearing No.223666 dated 20.9.2015. This cheque was again dishonoured due to insufficiency of fund. The Bank informed the complainant regarding dishonour of the cheque on 09.10.2015. Again he issued a notice to the respondent on 14.10.2015 but after receiving the notice on 16.10.2015, the amount was not paid that is why the complaint was filed on 24.11.2015. Version of this witness is supported by version of Chief Manager, Karnataka Bank Ltd. Branch Fafadih Chouk, Raipur namely Santosh Kumar (PW-2) and Special Assistant, Syndicate Bank Branch Ramsagarpara Raipur namely SK Agrawal (PW-3). It is further supported by documents Ex-P/1 to P/15. Ex-P/12 is the document which was written by the respondent in favour of the appellant acknowledging his liability of Rs.2 lakh.

8. It is argued on behalf of the respondent that in the notice sent to him the date of the advancement of the loan is mentioned as 30.12.2004, therefore, the case of the appellant is not correct but the fact remains that the appellant clarified in his deposition that it is a typographical error and in place of year 2014, it was typed as 2004. Version of the complainant is not rebutted by the respondent because the respondent did not enter into witness box, therefore, there is nothing to rebut the version of complainant Santram (PW-1).

9. 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;”

10. Presumption is rebuttable, but there is nothing on record to rebut the presumption. It is not a case where the respondent 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 a payee remains liable and he may adduce any evidence to rebut presumption. Presumption will live, exist and survive and shall end only when contrary is proved by the accused/respondent.

11. The trial Court recorded finding that no document was written at the time of advancing the loan, therefore, agreement dated 27.4.2015 is a suspicious document. Finding of the trial Court is clearly against the provisions of Section 139 of the Act, 1881. When legal presumption is not rebutted no corroboration is required. When the amount was advanced on the basis of personal relation, preparation of document is not required and cheque issued by the respondent shows the liability of the respondent.

12. On an overall assessment, it can be said that the finding of the trial Court is against the weight of the evidence and the same is not legal and contrary to the provisions of the Act, 1881. therefore, argument advanced on behalf of the respondent is not sustainable. The act of the respondent falls within mischief of Section 138 of the Act, 1881.

13. Accordingly, the appeal is allowed. Finding of the trial Court is hereby set aside. The respondent is convicted under Section 138 of the Act, 1881. The date of issuance of cheque is 20.9.2015. The appellant is entitled to interest 6% to the amount advanced by him. Accordingly, the respondent is sentenced to pay fine of Rs.2,70,000/- (Rupees Two lakh seventy thousand only) for offence under Section 138 of the Act, 1881. The trial court shall make effort to liquidate the amount as per provisions of CrPC. It is made clear that if the 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.2,70,000/-. 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.2 lakh till the realization of the entire amount. The entire fine amount shall be paid to the appellant for discharge of liability.

Sd/-

(Ram Prasanna Sharma)

JUDGE