Form J(2) **IN THE HIGH COURT AT CALCUTTA**
Criminal Appellate Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Bibek Chaudhuri

C.R.A. 180 of 2019

M/s. Ruby Infralogistics Pvt. Ltd.
-Vs.-
M/s. Rashmi Enterprises (Pvt.) Ltd. & Anr.

For the Appellant	:	Mr. Somopriyo Chowdhury, Adv., Mr. Dipayan Dan, Adv.
For the State	:	Mr. Mayukh Mukherjee, Adv., Mr. S. Nigam, Adv., Mr. D. Chakraborty, Adv.
Heard on	:	02.12.2021,06.12.2021, 07.12.2021.
Judgment On	:	24.12.2021

Bibek Chaudhuri, J.

The instant appeal is directed against the judgment and order of acquittal passed by the learned Metropolitan Magistrate, 20th Court at Calcutta in Complaint Case No. C 30480 of 2013, acquitting the accused persons/respondents from the charge under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881. Complainant of the aforesaid case is the appellant before this Court after the special leave to appeal filed by the appellant was allowed and the memorandum of appeal was accepted by this Court.

The complainant/appellant is a Private Limited Company registered under the Companies Act, 1956. It was alleged by the complainant-Company that it accommodated a loan of Rs.50,00,000/- only by way of fixed deposit as collateral on behalf of the respondent no. 1-Company in the Dena Bank, Park Street Branch and in discharging the said legal liabilities and debt, the respondent no. 1-Company issued one account payee cheque bearing no. 354086 dated 20th April, 2013 for an amount of Rs.50,00,000/- drawn on the Lakshmi Vilas Bank Ltd. in favour of the appellant-Company. The said cheque was duly signed by the respondent no. 2 as Director of the respondent no. 1-Company. The appellant-Company presented the said cheque on 11th July, 2013 in its account maintained in HDFC Bank Ltd. Park Street Branch but it was returned unpaid by the banker of the respondent-Company on the ground of insufficient fund. The appellant-Company came to know that the said cheque was dishonoured on 26th July, 2013 from the computer generated returned memo dated 12th July, 2013. The appellant-Company through its authorized representative sent a demand notice to the respondent no. 1-Company and respondent no. 2, Director of the Company through their learned advocate by registered post with acknowledgement due.

The accused no. 2 received the said notice on 23rd August, 2013. In spite of receipt of such notice, the respondents failed and neglected to pay the said amount of Rs.50,00,000/- in favour of the appellant-Company. So was the complaint filed before the learned Chief Metropolitan Magistrate, Calcutta.

The case was subsequently transferred to the 20th Court of the learned Metropolitan Magistrate, Calcutta for trial and disposal. The respondent no. 2 duly appeared before the Trial Court. He also represented respondent no. 1-Company when the acquisition against the respondent was stated and explained to respondent no. 2 under Section 251 of the Code of Criminal Procedure, he pleaded not guilty for self and on behalf of the respondent no. 1-Company. So, the trial of the case commenced.

During trial, the authorized representative of the appellant-Company, Vijay Kumar Gupta was examined as P.W. 1. P.W. 2, Manish Kumar was the Chief Manager of Dena Bank, Park Street Branch on 22nd July, 2016. P.W. 3, Kunal Gupta is a Director of the appellant-Company.

One Shasikant Konoi deposed on behalf of the defence as D.W. 1 during trial of the case.

Defence case as disclosed from the trend of the cross-examination of the witnesses on behalf of the complainant, examination of the accused persons under Section 313 of the Code of Criminal Procedure and the evidence of D.W. 1, Shasikant Konoi appears to be complete denial of the case of the complainant. It is the specific defence of the respondents that there was no debt or liability of the respondents to the appellant-Company. Therefore, question of issuance of cheque for a sum of Rs.50,00,000/- by D.W. 1 in favour of the appellant-Company does not arise at all. The witness on behalf of the defence, however, stated that one Mr. Bonka of the appellant-Company was personally known to him and he gave a signed blank cheque to Mr. Bonka on good faith. The said cheque was used by the appellant-Company in a dishonoured manner only to harass the respondents.

From the case and the defence of the appellant and the respondents, it is ascertained that the respondent no. 1-Company took loan of Rs.50,00,000/- from Dena Bank. As collateral security fixed deposit for a sum of Rs.50,00,000/- issued in the name of the appellant-Company was kept as collateral security in respect of the loan given to the respondent no. 1-Company, Rashmi Enterprises (Pvt.) Ltd. It is found from the evidence of P.W. 2 who was the Chief Manager of Dena Bank at the relevant point of time that the fixed deposit was renewed from time to time and finally on 5th January, 2013, the interest accumulated in the said fixed deposit was credited to the account of Rashmi Enterprises (Pvt.) Ltd. Subsequently, however, the said fixed deposit was credited to the loan account of the respondent no. 1-Company as the said Company failed to repay the loan amount within due time.

The learned Magistrate disbelieved the case of the complainant on the following grounds: -

First, the complainant Company failed to prove that the cheque in question was drawn in favour of the appellant-Company in discharge of any debt or other liability. Secondly, the complainant failed to satisfy as to why the complainant Company agreed to stand as a guarantor for the loan taken by the respondent no. 1-Company and deposited the fixed deposit of Rs.50,00,000/- as collateral security for the loan taken by respondent no. 1-Company. In the absence of any business relation between the appellant-Company and the respondent-Company, question of liability and issuance of cheque in discharge of such liability by the respondent no. 1-Company does not arise.

It was held by the learned Trial Judge that there is no document to show that a sum of Rs.50,00,000/- was given to the respondent No.1-Company either by the complainant or by Dena Bank and therefore, the appellant Company failed to prove its case and the accused respondents were acquitted by the learned Court of Trial.

Mr. Somoprriyo Chowdhury, learned advocate for the appellant submits that the learned Trial Judge failed to consider that the case of the complainant was not a simple case of payment of loan and issuance of cheque by the accused to repay the said loan and a case under Section 138 of the Negotiable Instruments Act is filed after the cheque issued by the accused in favour of the complainant in discharge of his liability towards loan is dishonoured.

The learned Trial Judge failed to appreciate that the respondent No.1 took loan of Rs.50,00,000/- from Dena Bank. The appellant agreed to release a fixed deposit amounting to Rs.50,00,000/- (Rupees Fifty Lakhs) as collateral security for the loan taken by the respondent No.1-Company. The said collateral security was appropriated by the bank on respondents' failure to make repayment of the loan. Therefore, liability of the respondent No.1 arises only when the fixed deposit in the name of the appellant-Company was appropriated against the loan amount granted in favour of Rashmi Enterprises (Pvt.) Ltd., respondent No.1 herein.

In support of his contention, learned Advocate for the appellant relies upon a decision of the Hon'ble Supreme Court in ***Bir Singh Vs. Mukesh Kumar*** reported in ***(2019) 4 SCC 197***. In the aforesaid report, the Hon'ble Supreme Court had the occasion to deal with the scope of Sections 139, 20 and 87 of the Negotiable Instruments Act,

1881. It was held by the Hon'ble Supreme Court in the following Paragraphs as hereinunder:-

"32. *The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.*

33. *A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.*

34. *If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence".*

The learned Advocate for the appellant next refers to a decision of this Court in ***Nita Kanoi @ Bansal Vs. M/s. Paridhhi & Anr.*** reported in ***(2015) 1 Cal LT 626***. In the said judgment, it is held by this Court that Section 20 of the Negotiable Instruments Act defines a cheque signed by the drawer without writing the name of the drawee and the amount in the said cheque as an "*inchoate stamped instrument*". According to the said provision, where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instrument, either wholly blank or having written thereon, an incomplete negotiable instrument, he thereby gives, *prima facie,* authority to the holder thereof to make or complete, as the case may be, upon it, a negotiable instrument for any amount specified therein and not exceeding amount covered by the stamp. The provision further provides the person so signing shall be liable upon such instrument, in the capacity in which he signs the same, to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

On a plain reading of the aforesaid provisions, it is abundantly clear even if an incomplete negotiable instrument, signed by the drawer delivers to anyone it authorizes the holder thereof to make or complete the same as the case may be and also the person so signing shall be liable upon such instrument, in the capacity in which he signed the same to any holder thereof in due course for payment of such amount. Therefore, even if a bill of exchange, which includes a cheque, if delivers to any person signed by the drawer, no payment against such cheque can be denied on the plea the same was delivered to the person was partially blank. Since the signature in the cheque has not been disputed there is no need for verification of the handwriting by which the name of the payee and the amount has been filled up. On the same scope, learned Advocate for the appellant refers to another decision of this Court in case of ***Sujit Kumar Pal Vs. State of West Bengal & Anr.*** reported in ***2016 SCC OnLine Cal 12118***.

Thus, it is submitted by the learned Advocate for the appellant that the learned Magistrate misplaced the burden upon the appellant to prove that respondent No.1-Company had liability to make payment in favour of the appellant-Company and in order to discharge such liability, the cheque was issued by the respondent No.2. Practically, burden is on the respondents to rebut the presumption that the cheque was not drawn in discharge of any liability to the appellant-Company. The respondents failed to discharge such burden and they ought to have been held guilty for committing offence under Section 138 read with Section 141 of the Negotiable Instruments Act.

Mr. Moyukh Mukherjee, learned Advocate for the respondents, on the other hand, submits that the appellant filed the complaint under Section 138 of the Negotiable Instruments Act only to harass the respondents and the entire proceeding is *mala fide*. It is submitted by the learned Advocate for the respondents that the appellant-Company failed to prove that they issued a fixed deposit amounting to Rs.50,00,000/-(Rupees Fifty Lakhs) drawn on Dena Bank in favour of the respondent No.1-Company and the cheque in question was issued by respondent No.2 in discharge of the said liability. He has also raised a question that if a bank loan is sanctioned in favour of one Company, can another Company stand as guarantor and deposit its fixed deposit with the bank as collateral security.

In order to substantiate his argument, it is argued by the learned Advocate for the respondents with reference to a decision of the Hon'ble Supreme Court in the case of ***Krishna Janardhan Bhatt Vs. Dattatraya G. Hegde*** reported in ***(2008) 4 SCC 54*** that Section 139 merely raise a presumption in favour of holder of cheque that the said cheque has been issued for discharge of any debt or other liability. With the said ……. of Section 139 the Court cannot presume existence of any illegal enforceable debt. Therefore, it is the duty of the appellant-Company always to prove that illegal enforceable debt was in existence against the respondents. The appellant-Company failed to prove the said fact. Therefore, the decision of the learned Trial Court had no scope of interference.

The learned Advocate for the respondents next refers to another decision of the Hon'ble Supreme Court in the case of ***John K. Abraham Vs. Simon C. Abraham & Anr.*** Reported in ***(2014) 2 SCC 236*** . In the said report on factual scope the complainant could not prove as to who wrote the cheque and made contradictory statements in this regard. In view of such serious defects/lacuna in evidence of the complainant, the order of acquittal passed by the Trial Court was restored by the Hon'ble Supreme Court. In the instant case, the cheque in question was signed by D.W.1. The complainant failed to prove who wrote the body of the cheque. This is a serious lacuna in the case of the complainant and order of acquittal passed by the learned Trial Court cannot be disturbed.

Mr. Mukherjee next refers to the reported decision in the case of ***Basalingappa Vs. Mudibasappa*** reported in (***2019) 5 SCC 418.*** In the said report, the Hon'ble Supreme Court held that though in a case under Section 138 of the Negotiable Instruments Act, the Court can take presumption under Section 139 but the said presumption is rebuttable and the accused can rebut the presumption only on the basis of preponderance of probabilities.

Having heard the learned advocates for the appellant and the respondents it is ascertained that issuance of a cheque by D.W.1 in favour of the appellant company is not disputed. The respondents have denied existence of any legally enforceable debt or liability to the appellant company and according to D.W.1 one Mr. Banka of the appellant company was a personal friend of D.W.1 and on his request he had kept a blank signed cheque in his custody. The appellant company has converted the same to an negotiable instrument for *mala fide* intention. In support of the defence case the learned advocate for the appellant has relied upon a decision of the Hon'ble Supreme Court in **Krishna Janardhan Bhatt** (supra).

In **Rangappa versus Sri Mohan** reported in **(2010) Volume 11 SCC 441** it was submitted on behalf of the appellant /holder of the cheque that the proposition of law as enunciated in **Krishna Janardhan Bhatt** (supra) was in conflict with statutory provisions as well as an established line of precedence of the Apex Court. In that context the Hon'ble Supreme Court in **Rangappa** (supra) held:-

"……the presumption mandated of Section 139 of the Act does indeed include the existence of legally enforceable or debt or liability."

In the light of the said observation, the decision in **Krishna Janardhan Bhatt** (supra) was overruled. The observation of the Three-Judge Bench in **Rangappa** (supra) runs as under:-

"Where in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include

the existence of a legally enforceable debt or liability to the extent, the impugned observations in ***Krishna Janardhan Bhatt*** *(supra)* ***(2008) 4 SCC 54*** *may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations this is, of course, in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant."*

In **Bir Singh** (supra), the Hon'ble Supreme Court was pleased to hold that a conjoint reading of Sections 20, 87 and 139 of Negotiable Instruments Act, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable, unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. I have already recorded that the instant case is not similar to a common dispute involved in a case under Section 138 of the Negotiable Instruments Act. P.W.2 being the Chief Manager of Dena Bank, Park Street Branch had deposed during trial of the case that respondent No.1 company took loan of Rs.50,00,000/- (Rupees Fifty Lakhs) from the said bank and fixed deposit certificate of Rs.50,000/- (Rupees

Fifty Thousand) was in the name of the appellant company was kept as a collateral security for the said loan. The said witness has also stated that the amount mentioned in the fixed deposit was appropriated by the bank to liquidate the loan amount which was granted in favour of the respondent No.1 company on its failure to make payment of the loan amount. Thus, legal enforceable debt or liability as against the respondent No.1 Company arose on appropriation of the amount of the fixed deposit, which stood in the name of the appellant.

Learned Magistrate failed to consider such aspect of the matter and acquitted the accused persons.

Needless to say that the Appellate Court shall be slow in interfering with the order of acquittal passed by the trial Court. If the evaluation of the evidence and the findings recorded by the trial Court do not suffer from any illegality or perversity and the grounds on which the trial Court has based its conclusion are reasonable and possible. The High Court should not disturb the order of acquittal if another view is possible merely because an Appellate Court on reappreciation and reevaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial Court is a possible view. However, the High Court in an appeal under Section 378 has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence on record, the order of acquittal should be reversed when the trial Court fails to appreciate the evidence on record lawfully in its true perspective or the order of acquittal suffers from patent legality and mala fide, the High Court has every authority to reverse the judgment of acquittal.

In the instant appeal, it is found on proper appreciation of evidence that the learned Magistrate erred in appreciating the evidence on record. She also fails to ascertain the fact of the complainant's case and illegally held that the complainant failed to prove that the cheque in question was issued by D.W.1 in discharge of a legally enforceable debt. She also failed to consider the law of presumption enunciated in Section 139 of the Negotiable Instruments Act in its true perspective. Therefore, the judgment and order of acquittal passed by the learned Metropolitan Magistrate, 20th Court, Calcutta in C 30480 of 2013 is liable to be set aside.

Accordingly, the appeal is **allowed** on contest, however, without costs.

The judgment and order of acquittal passed by the learned Metropolitan Magistrate, 20th Court, Calcutta in C 30480 of 2013 is set aside.

The respondents are convicted for committing offence under Section 138 read with Section 141 of the Negotiable Instruments Act.

The complaint case being C 30480 of 2013 be sent to the 20th Court of the learned Metropolitan Magistrate, Calcutta directing her to issue notice upon the respondents to appear before the trial Court for hearing on the point of sentence

After the respondents being heard on the point of sentence, the learned Magistrate is directed to pass an order of sentence against the respondents for committing offence under Section 138 read with Section 141 of the Negotiable Instruments Act. The instant appeal is, thus, disposed of.

A copy of this judgment along with the lower Court record be immediately sent to the Court below for information and compliance.

The parties are at liberty to act on the server copy of this judgment.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Bibek Chaudhuri, J.)

Srimanta/Mithun/Suman
A.Rs. (Court)