

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 947 of 2015

Reserved on 12.04.2021

Delivered on 19.05.2021

Keshav Kumar Katendra son of Uttam Singh Katendra, aged about 34 years, resident of Mokha, Tahsil Gurur, District Balod, Chhattigarh.

---- Applicant / Accused

Versus

Rejnald Peter son of late John Peter, resident of Masih Hospital, Dhamtari, Tahsil and District Dhamtari, Chhattisgarh.

---- Respondent/ Non-applicant

For the Applicant	: Shri B.P. Singh, Advocate.
For the Respondent	: Shri Rishi Rahul Soni, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

Heard.

1. This criminal revision petition has been brought being aggrieved by the judgment dated 6.10.2015 passed in Criminal Appeal No. 114 of 2013 by the Learned Additional Sessions Judge (F.T.C.), Dhamtari, District Dhamtari, upholding the judgment of conviction against the applicant under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act, 1881'), however, the sentence imposed was modified.
2. Respondent – Rejnald Peter had filed a complaint against the applicant under Section 138 of the Act, 1881, on the basis that the applicant had borrowed Rs.1,00,000/- from the respondent and for repayment of the same he had given a cheque of the same amount on 21.11.2009. The cheque was presented for payment by the respondent in his account in the Oriental Bank of Commerce, Branch Dhamtari on 2.12.2009, which

was dishonoured. The respondent sent notice on 11.12.2009 to the applicant, which was received, but the applicant did not make any payment of the amount of cheque. Subsequent to which, the complaint was filed.

3. The applicant made plea of denial to the substance of accusation against him. Learned trial Court completed the trial and the judgment was passed on 28.11.2013, by which the applicant was convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced with rigorous imprisonment for six months alongwith fine of Rs.5,000/-. The applicant preferred an appeal, which has been disposed off by the impugned judgment in which the conviction against the applicant has been maintained, however, the sentence imposed by the trial Court has been modified, the jail sentence was set aside and the applicant was ordered to pay compensation of Rs.1,25,000/- under Section 357(3) of the Cr.P.C. with a condition that on non-payment of the compensation, the applicant shall be required to undergo simple imprisonment for three months.
4. It is submitted by counsel for the applicant that the impugned judgment is erroneous, illegal and contrary to the facts and circumstances of the case. The applicant had borrowed an amount of Rs.50,000/- only from the respondent and he repaid the loan amount in full. The applicant had provided a blank cheque to the respondent as security for the loan amount. The applicant has proved the said facts in the trial by bringing proper evidence. Learned trial Court and the Appellate Court both have failed to appreciate the same.
5. Reliance has been placed on the judgment of Supreme Court in the case of **M.D. Thomas vs. P.S. Jaleel and Anr.**, reported in **(2009) 14 SCC 398**, in that case the notice of demand was not effectively served

upon the accused, therefore, he was acquitted. Reliance has also been placed on the judgment of Supreme Court in the case of **Basalingappa vs. Mudibasappa**, reported in **(2019) 5 SCC 418**, in which it has been held that it is the burden of the prosecution to prove its case beyond reasonable doubt, however, the accused has to prove his case only to the extent of the preponderance of probabilities. Hence, it is prayed that this petition be allowed and the impugned judgment of conviction against the applicant be set aside.

6. Learned counsel appearing for the respondent opposes the submissions so made and submits, that no error has been committed by the trial Court and the Appellate Court in convicting the applicant for offence under Section 138 of the Act, 1881. Although, the applicant had set up this defence that the cheque was given in security of the loan but the same was not proved by him, therefore, the impugned judgment is sustainable, which needs no interference. Hence, the revision petition be dismissed.
7. Considered on the submissions. In the scrutiny to find out the legality, propriety and correctness of the impugned judgment, the only thing which is required to be examined in this revision petition, is whether the applicant had brought evidence on the point of his defence, which can be regarded as sufficient in the standard of preponderance of probabilities. There appears to be no denial that the applicant had borrowed money from the respondent and that he had also given a cheque to the respondent. The dishonour of the cheque, the issuance of notice, the receipt of notice and the non-payment of cheque amount are also not disputed by the applicant side before this Court.
8. Rejnald Peter (PW-1)/ respondent has stated about the issuance of cheque by the applicant of Rs.1,00,000/- in his favour on 21.11.2009

vide Ex.P/1, which was dishonoured by the bank. In cross-examination, he has stated that he had given cash loan to the applicant about three months prior to the date of cheque, he has denied other adverse suggestions given by the applicant side, he further denied that the cheque was provided by the applicant as security, he has also denied that the applicant had borrowed Rs.50,000/- only and that the applicant has repaid the same in full. The applicant has also examined witnesses in defence. Prabhuram (DW-1) has stated about the event, that in his presence, the applicant made payment of Rs.10,000/- to the respondent in the month of December, 2008. Jhavar Lal (DW-2) has made similar statement that in his presence the applicant made payment of Rs.20,000/- to the respondent but he has not mentioned any date of such payment. Ghanshyam Sinha (DW-3) has made similar statement that in the month of February, 2009, he was with the applicant when he paid Rs.20,000/- to the respondent. He has also stated that the applicant had borrowed Rs.50,000/- from the respondent for that he had given a blank cheque for security. In cross-examination, he has denied adverse suggestion and he is unable to give details regarding the cheque and the bank account of the applicant.

9. Gautam Kar (DW-4) has stated that the respondent had issued a cheque in favour of the applicant. Cheque of State Bank of India in favour of the applicant was en-cashed by the applicant on 12.8.2008. The cheque was for an amount of Rs.50,000/- and he is unaware of other transactions made between the applicant and the respondent. The applicant has examined himself as (DW-5), who has stated that he had borrowed Rs.50,000/- on 16.8.2008 and in security of the same, he had provided a blank cheque to the respondent. He has paid all the amount to the respondent in installments and he has never borrowed

any money from the respondent after February, 2009. The complaint filed against him is false and in cross-examination, he has denied adverse suggestions.

10. The defence evidence that has been brought by the applicant is to prove that the applicant had borrowed Rs.50,000/- from the respondent in the month of August, 2008 and he has made repayment of the same. The evidence of the respondent side on the contrary is that the cheque was drawn on 21.11.2009 and the amount was borrowed by the applicant about three months prior to that date. Therefore, the evidence that has been brought in defence, cannot be connected with the evidence in the complaint case, which shows about a different transaction between the applicant and the respondent. The trial Court has disbelieved the evidence brought by the applicant side and held that the presumption that is available under Section 139 of the Act, 1881, has not been rebutted. The Appellate Court has also held similarly that the defence has failed to bring evidence to dispute the complaint case. This Court has also held herein-above that the defence appears to be unconnected with the transaction which was the basis of filing complaint by the respondent side. Therefore, I am of this view that this revision petition is without any substance, which is dismissed.

11. Accordingly, the revision petition is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge