11.02.2022
S/L No.20
KS/BM

(Via Video Conference)

C.R.A. 398 of 2001

Sri Pradip Kumar Basu
-Vs.-
City Link Commotrade Pvt. Ltd. & Anr.

The appeal is listed today for hearing. On call none appears for the appellant/complainant as well as for respondent no.2.

The Registry by order dated 16.09.2021, was directed to issue Administrative Notice upon the complainant/appellant as well as accused/opposite party. As per report dated 11.01.2022 notice has been served upon Mr. Pradip Kumar Basu, the appellant but notice could not be served upon respondent no.1/M/s. City Link Commotrade Private Limited and respondent no.2 Mr. Rajesh Somani. The report submitted by police disclose that the respondents could not be traced out at the given address. Since both the parties are absent and did not appear before the Court, the appeal is taken up for consideration and disposal by exercise of powers vested in this Court under Section 386 of the Code of Criminal Procedure.

Opportunity was given to the appellant and the respondents to appear and make their submissions but they have failed to do so.

The appellant, who is the complainant in C. Case No.518 of 1997 under Section 138/141 of the Negotiable Instruments Act has preferred this appeal under Section 378(4) of the Code of Criminal Procedure, assailing the order dated 2.5.2001 passed by the Metropolitan Magistrate, 8th Court, Calcutta wherein the respondents company and respondent no.2, its Director were acquitted from the offence under Sections 138/141 of Negotiable Instruments Act.

Perused the impugned judgement dated 2.5.2001 passed in case no.C/518 of 1997 and the evidence on record.

In brief, the facts of the case is that the complainant/appellant Pradip Kumar Basu is the Executive Director of M/s. Rollsprint Packaging Limited, a group of Companies which includes M/s. City Link Commotrade Pvt. Ltd. For service rendered by the complainant from 15.11.1996 to 12.5.1997, the group Company, respondent no.1 herein, issued two cheques through accused no.2/respondent no.2 of the amount of Rs.55,000/- each, bearing cheque No.041435 dated 20.6.1997 and cheque 041436 dated 20.07.1997 in favour of the appellant/complainant, drawn on State Bank of Indore, Brabourne Road Branch, Calcutta as part payment of dues. The cheques were presented with the drawee Bank, being Allahabad Bank, Beadon Street Branch, Calcutta on 21.07.1997 for encashment but the cheques were dishonoured and returned on 23.07.1997 with remark "insufficient fund". A return memo dated 22.07.1997 accompanied the cheques. Demand notice was issued by the complainant on 1.08.1997 through his lawyer demanding payment of the cheque amounts within 15 days. The notice was received on 1.8.1997 but no payment was made to the complainant/appellant. A case was filed on 11.9.1997, within one month from the date of cause of action. The accused person was summoned and the accused/respondent no.2 on examination under Section 251 of the Code of Criminal Procedure pleaded not guilty to the accusation under Sections 138/141 of the Negotiable Instruments Act.

In support of his case the complainant examined himself as PW-1. One Gautam Banerjee, the Manager of Allahabd Bank was examined as PW-2, Satyajit Sarvadhikary, a staff of the State Bank of Indore, Brabourne Road was examined as PW-3. Documents have been marked as exhibit 1 to exhibit-12 for the complaint which includes documents, like demand notice, cheques, dishonour memo and certified copy of ledger of bank.

Accused no.2 was examined under Section 313 of the Code of Criminal Procedure who admitted that cheques were dishonoured and declared himself as innocent. One Tarun Kumar Chowdhury, legal officer of accused no.1, was examined as DW-1.

After considering the evidence and materials on record, learned Magistrate observed that there was no dispute regarding issuance of cheques by the Rajesh Somani, the Director of M/s. City Link Commotrade Pvt. Ltd. but complainant could not prove the liability of the accused company and person towards him by not being able to establish the relation between the complainant's company M/s. Rollsprint Ltd. and M/s. City Link Commotrade Pvt. Ltd.

This appeal against acquittal has been filed on the grounds inter alia, that the Learned Metropolitan Magistrate, 8th Court, Calcutta has failed to appreciate the evidence in its proper perspective and has illegally and perversely held that the company has failed to prove the existing liability of the accused company and the connection between M/s. Rollsprint Ltd. and M/s. City Link Commotrade Pvt. Ltd.

Furthermore, the accused person admitted during his examination under Section 313 of the Code of Criminal Procedure that the cheques issued by him have been dishonoured and the accused failed to rebut the presumption raised against him under Section 139 of the Negotiable Instruments Act. Therefore, Learned Magistrate by misplacing the burden of proof acted perversely and illegally in holding that the complainant failed to establish the guilt of the accused and in acquitting them.

It is urged that the impugned judgment is liable to be set aside and accused/opposite party should be held guilty of the offence under Section 138/141 of the Negotiable Instruments Act and sentenced and directed to compensate the appellant.

It appears to me that the learned Magistrate had failed to appreciate the evidence and the presumption under Section 139 of the Negotiable Instruments Act, that the onus lies upon the accused person, who issued the cheques. Therefore, a person who has undisputedly issued the cheques cannot shirk the responsibility when they are dishonoured unless he proves that such cheques were not for discharge of debt or other liability in whole or in part in favour of the payee. The Ld. Magistrate has misplaced the burden of proof.

In my considered view the complaint case has been lodged within the statutory period laid down in Section 142(b) of the Negotiable Instruments Act. As such, the decision arrived at, acquitting the appellant is not legally tenable. The impugned judgement and order is therefore, set aside. The case is remitted to the 8th Court of Metropolitan Magistrate, Calcutta for summoning the complainant and the accused respondent and after giving them an opportunity of hearing pass a fresh judgement in accordance with law on the evidence already on record, preferably within three months from receipt of this order.

The appeal is accordingly allowed and disposed of.

All pending connected applications, if any, are consequently disposed of.

Let the LCR along with copy of this judgement be sent down to the 8th Court of Metropolitan Magistrate for information and compliance.

Urgent photostat certified copy of the order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Ananda Kumar Mukherjee, J.)