

CRA 85 of 2019

In the matter of : Sri Srikanta Das

Mr. Kishore Mukherjee
Mr. Ahitagni Dey ... for the appellant

Challenge in this appeal is to the judgement and order of acquittal passed by the learned Additional Chief Judicial Magistrate, Contai, Purba Medinipur in Complaint Case No. 160 of 2016.

Briefly stated, Sri Srikanta Das filed a petition of complaint under Section 138 of the Negotiable Instruments Act before the learned Additional Chief Judicial Magistrate, Contai, Purba Medinipur stating inter alia that on 08.8.2015, he lent a sum of Rs.3,00,000/- to Sri Nanigopal Dutta, who in discharge of his obligation to repay the debt issued two cheques on 06.11.2015 being Cheque Nos. 037239 & 037240 each of Rs.1,50,000/- drawn on Mugberia Central Co-Operative Bank, Bhagabanpur branch. The complainant being the drawee presented the cheques to his banker on 05.01.2016 but those cheques were not honoured due to insufficient fund. On 13.01.2016 he came to know about the factum of dishonor of cheques and on 11.02.2016 he issued notice calling upon the drawer of the cheques to pay the cheques' amount. The drawer of the cheques, however, maintained silence which compelled the drawee to file the application before the jurisdictional Court under Section 138 of the Negotiable Instruments Act.

Learned Trial Court after taking cognizance, complying with the provision of Section 200 of Cr.P.C. issued process calling upon the accused person to surrender to the jurisdiction to stand the trial.

Accordingly, accused person surrendered and contested the proceedings. Learned Trial Court after considering the evidence on record both oral and documentary as adduced by the complainant and the accused person and his witnesses was pleased to hold that complainant failed to prove the charge and thus recorded an order of acquittal.

Mr. Mukherjee, learned counsel representing the appellant submits that judgement impugned was passed absolutely on misreading of evidence resulting into miscarriage of justice.

Drawing my attention to the impugned judgement, learned counsel representing the appellant submits that learned Trial Court failed to appreciate the purport of Section 139 of the Negotiable Instruments Act. It is argued that the learned Trial Court failed to consider the presumption of fact that the accused person issued the cheques or in other words the complainant being the holder of the cheques should be presumed to have received the same being issued by the drawer in discharge of his obligation to repay the debt.

By adducing the evidence as P.W.1, complainant has proved that the cheques issued by the accused person were presented to the banker of the complainant and the cheques were returned due to insufficient fund. Within the prescribed period statutory notice of demand was given to the accused person, who received the notice but did not act. Thereafter, the case was filed. Therefore, the complainant successfully discharged his obligation to prove the ingredients essential to constitute an offence within the meaning of Section 138 of the N.I. Act. That accused person was under obligation to discharge

his onus springs out of the statutory mandate as laid down under Section 139 of the N.I. Act.

In his defence the accused person as D.W.1 stated that he used to run business jointly with the brother of the complainant Ranjan Das. When he went to Vellore he entrusted the brother of the complainant with four blank cheques which were misused by the complainant. Learned Trial Court having considered the said statement of accused person as D.W.1, considered it sufficient to rebut the presumption of Section 139 of the N.I. Act and further learned Trial Court was pleased to draw adverse inference under illustration (g) of Section 114 of Evidence Act against the complainant for non-examination of his brother Ranjan Das.

Section 103 of the Evidence Act enunciated that he who wishes the Court to believe a certain fact, burden of proof as to that particular fact lies upon the said person. In this case the accused person took this specific plea that he handed over four blank cheques to the brother of the complainant Ranjan Das. Thereby he incurred the obligation to prove this fact before the Court under Section 103 of the Evidence Act. Learned Trial Court missed this provision of law and committed error in shifting the burden of proof upon the complainant. It goes without saying that issuance of cheques carries with it the presumption that the cheques were issued in discharge of, in whole or in part of any debt or other liability. Therefore, learned Trial Court ought to have presumed that the accused person issued the cheques in discharge of his liability. Learned Trial Court highlighted certain aspects of Income Tax Act which is not at all relevant to consider a case under Section 138 of N.I. Act.

Learned Trial Court had no business to find out whether the complainant had the capacity to lend the money. Presumption ought to have been drawn in favour of the complainant to hold that complainant must have lent money and in discharge of such obligation to repay the same, the cheques were issued by the accused person and this presumption is required to be rebutted by the accused person.

Therefore, I am of the view that the learned Trial Court committed error in passing the impugned order of acquittal which warrants interference.

Accordingly, I set aside the impugned judgement and remit the case to the learned Trial Court for writing the judgement afresh in the light of observation made hereinbefore.

Learned Trial Court, however, will be at liberty to give opportunity to the parties to argue their respective cases afresh and if necessary to adduce evidence.

It is expected that the learned Trial Court will take all possible step to secure the right of the litigants to have speedy trial.

With this observation, the criminal appeal is disposed of.

Let a copy of the order along with lower court record be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)