

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.470 OF 2008

Anirudha Anantrao Sirdeshpande,
Age 48 yrs., Occ. Business,
R/o 18, Rajnagar, Station Road,
Aurangabad.

... Appellant

... **Versus** ...

- 1 Pandit Instruments Pvt. Ltd.,
BH-1/22.R.10 1-2,
Prabodhankar Thakre Nagar,
CIDCO, Aurangabad.
- 2 Smt. Madhuri w/o Prabhakar Pandit,
Age 48 yrs., Occ. Business,
R/o BH-1/22.R.10 1-2,
Prabodhankar Thakre Nagar,
CIDCO, Aurangabad.

... Respondents

...

Mr. A.P Bhandari, Advocate for appellant

Respondent No.1 - served

Mr. A.S. Gandhi, Advocate for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 27th JUNE, 2022

PRONOUNCED ON : 27th JANUARY, 2023

JUDGMENT :

1 Present appeal has been filed by the original complainant challenging the acquittal of the respondents by learned Judicial Magistrate First Class, Aurangabad in Summary Criminal Case No.3718/2001 on 28.02.2007 from the offence punishable under Section 138 of the Negotiable Instruments Act.

2 Heard learned Advocate Mr. A.P. Bhandari for the appellant and learned Advocate Mr. A.S. Gandhi for respondent No.2.

3 The original complainant has come with a case that he is the proprietor of one M/s. Creative Industries. Accused No.1 is a private limited company and accused No.2 is the Director of accused No.1. It is also stated that she was responsible for the day to day affairs of the accused No.1-company. The complainant had business transactions with accused No.1 and in connection with the same, accused No.1 had issued cheque bearing No.297022 dated 23.04.2001 for Rs.3,49,000/- through Managing Director Mr. Prabhakar Pandit, as part payment towards outstanding bill. The said cheque was drawn on State Bank of Hyderabad, Branch Aurangabad. It was presented by the complainant for encashment with his banker Ajanta Urban Co-operative Bank, Aurangabad, however, the cheque was dishonoured with

reason “Exceed Arrangement” and the said intimation was received by the complainant on 06.08.2001. The complainant issued statutory notice to both the accused on 16.08.2001, which was in fact posted on 18.08.2001. That notice was received to the accused persons on 24.08.2001, however, in spite of receipt of the said notice the amount under the cheque was not given and, therefore, he filed the complaint.

4 After the verification, process came to be issued by the learned Magistrate and thereafter the learned magistrate had recorded the plea of accused. After the accused pleaded not guilty trial has been conducted. The complainant has examined himself as well as he has also examined CW 2 Alhad Kulkarni. When the incriminating evidence had come on record, the learned Magistrate has recorded the statement of accused under Section 313 of the Code of Criminal Procedure and thereafter the accused No.2 has examined herself and withstood the ordeal of the cross-examination. Taking into consideration the evidence on record the learned Magistrate after hearing both sides held that the complainant has failed to prove that there was legally enforceable debt or liability towards the complainant by the accused. It was also held that since the signatory to the cheque i.e. Managing Director Mr. Prabhakar Pandit had expired prior to the presentation of the cheque for its encashment and the accused No.2 was successful in proving

that she had no knowledge about the issuance of the said cheque; the accused is successful in rebutting the presumption under Section 139 of the Negotiable Instruments Act. The learned Magistrate thereby acquitted the accused. Hence, this appeal.

5 Learned Advocate Mr. A.P. Bhandari appearing for the appellant has vehemently submitted that the respondent-accused No.1 is a private company, in which there were only two Directors; one was Mr. Prabhakar Pandit and another was accused No.2 Smt. Madhuri Prabhakar Pandit. It has come on record that there were business transactions between the complainant and the accused No.1-company. Various goods were supplied by the complainant to the company and even payments were made by the complainant to various vendors. Under such circumstance, the accused was expected to pay the said amount, which can be said to be legally enforceable debt or liability, since the price of the goods, which was supplied by the complainant or for which he has paid the amount for accused-company, should be reimbursed to him. The cheque in question was in fact issued towards the outstanding amount and it was the part payment. Unfortunately Mr. Prabhakar Pandit expired on 08.05.2001 and accused No.2 remained to be the sole Director of the company. The cheque was presented by the complainant with his banker on 30.07.2001 and after its dishonour he had in

fact issued statutory notice. At least after receipt of the statutory notice it was expected that the accused No.2, who was looking after the business after the demise of her husband, should have paid the amount or even responded to the said notice. But no such action has been done. In his testimony CW 1 Aniruddha has stated that in the Memorandum of Association, of which copy has been produced on record, it has been shown that the accused No.2 was the Director of the company. Now she cannot take a defence that she was not looking after the day to day affairs of the company. The appellant has produced on record letter dated 30.07.2001 issued by M/s. Microtechnica dealing in high precision turned parts and brass materials situated at Gaziabad. It was to show that the material was bought and brought on behalf of accused No.1. There is also reference to the signature on the said letter in the testimony of CW 1 Aniruddha, but still that document has not been exhibited by the Trial Court. In fact, that was done as per the internal arrangement. The purchase order was dated 09.05.2000 issued by accused No.1-company and the reference of the same can be made in the examination-in-chief of CW 1 Aniruddha. Therefore, there was evidence on record to connect the disputed cheque with the outstanding amount/transaction. So also, CW 2 Alhad Kulkarni, who was working for accused No.1-company has also deposed that there used to be business transactions between the complainant and the accused-company, which has

also the reference of the specific transaction with Microtechnica from Gaziabad. The learned Trial Judge ought not to have gone to the extent as to whether the prima facie evidence has been led to show that there was legally enforceable debt or liability. When in fact the issuance of cheque is almost not in dispute or never challenged by the accused as a forged document, then, raising of presumption under Section 139 of the Negotiable Instruments Act was obvious. The learned Trial Court has also not considered the admissions given by DW 1 Madhuri. She has stated that in the said company-accused No.1, she was one of the Directors along with her husband and it is a registered company. She has admitted the signature on the acknowledgment of the notice. This shows that the notice was received by her, still she has not reacted to the same. The learned Trial Court wrongly observed that the contents regarding the transaction are not mentioned in the legal notice and all the documents regarding the transaction were produced at the stage of evidence and not prior to that, raises question. It was harped upon that in his cross-examination CW 1 Anirudha has admitted that he was not agent of the accused and, therefore, unless it is shown that he has paid the amount, question of issuing cheque by deceased Prabhakar will not arise. Observations to that extent are wrong, so also the testimony of CW 2 Alhad Kulkarni has been ignored by saying that he had no personal knowledge about the transaction. The learned Trial Court has failed to consider the

presumptions under Section 118 and 139 of the Negotiable Instruments Act as well as the ratio of the Hon'ble Apex Court in **Hiten P. Dalal vs. Bratindranath Banerjee, 2001 STPL 8734 SC** and **APS Forex Services Private Limited vs. Shakti International Fashion Linkers and others, AIR 2020 SC 945**. It was also submitted on behalf of the appellant that the approach of the Trial Court in appreciating the evidence was like a regular criminal case and not summary, which is in fact the nature of the offence, as per the enactment itself. When accused No.2 admitted that she was Director of the company, it was incumbent on her part to make the payment of the cheque, which was issued by the earlier partner. At the time of issuance of the said cheque her husband was alive. Learned Trial Judge ought to have convicted the accused persons. The learned Advocate for the appellant, therefore, prayed for setting aside the impugned Judgment and convicting the accused.

6 Per contra, the learned Advocate appearing for the accused supported the reasons given by the learned Trial Judge and submitted that though there is presumption under Section 139 of the Negotiable Instruments Act; yet, it is the complainant who has to prove the offence beyond reasonable doubt. The presumption under Section 139 of the Negotiable Instruments Act is rebuttable presumption. In order to rebut the presumption, the accused may rely on the evidence that has come on record

including the cross-examination of the complainant's witnesses and also may rely upon the evidence led by the accused. In fact, it is not necessary that in each and every case the accused should enter the witness box to rebut the presumption under Section 139 of the Negotiable Instruments Act. Herein this case, in his cross-examination CW 1 Aniruddha has admitted that he has not produced original documents to support his contention that amount of Rs.3,49,000/- or more than that was outstanding from the company. In respect of which transaction that amount was outstanding has not been clarified by him. Reference to that effect is not made in his statutory notice nor in the complaint nor even in the affidavit of examination-in-chief. It appears that one document is later on filed but it has not been got exhibited and proved by the complainant. He has placed reliance on the decision of co-equal Bench of this Court of Principal Seat in **Jaimin Jewellery Exports Private Limited and others vs. State of Maharashtra and another, 2017 DGLS (Bom.) 1278 : 2018 (1) Bom.C.R. (Cri.) 643**, wherein it has been held that *onus would be on complainant to prove an amount quantified in cheque was existing liability and in case of failure of complainant to prove liability of accused in respect of amount quantified the conviction deserves to be set aside.*

his cross-examination CW 1 Anirudha was unable to answer the question in respect of his statement that he has supplied various goods as per order placed by accused-company and accordingly he had forwarded the orders to suppliers. He has categorically stated that he was not acting as an agent for accused No.1-company. He has also stated that he does not want to say that cheque in question was taken by him as against amount payable to suppliers, though he has stated that he used to make payment on behalf of accused to suppliers. If he had paid amount of Rs.3,49,000/- towards a particular transaction on behalf of the accused-company to alleged company M/s Microtechnica, then, at the most the complainant ought to have examined the person from the said company to support his contention. His accounts or Balance Sheet was never produced. Further, in this case, complainant had knowledge about the death of Prabhakar prior to the presentation of the cheque, still he had not contacted accused No.1-company or even accused No.2. He has not tried to get a fresh cheque towards the said outstanding amount. It could have been the normal conduct of a person in such situation. On the date of presentation of the cheque the signatory to the cheque was not alive. Except statement that accused No.2 was Director of accused No.1-company there is nothing on record to show that accused No.2 was actively participating. Definitely, she has started participating in the day to day affairs of the company after the demise of her husband and not prior to that. She

has entered the witness box and categorically made statement to that effect. Under the said circumstance the learned Trial Judge was justified in acquitting the accused.

8 As regards the legal position in respect of presumption under Section 139 of the Negotiable Instruments Act is concerned, the ratio laid down in **APS Forex Services Private Limited** (supra) cannot be denied. So also note will have to be taken of the decision of the Supreme Court in **Oriental Bank of Commerce vs. Prabodh Kumar Tewari, 2022 SCC OnLine SC 1089**. In this case reliance was placed on **Rangappa vs. Sri Mohan, (2010) 11 SCC 441**. It was observed that -

“The expression “unless the contrary is proved” indicates that the presumption under Section 139 of the Act is rebuttable. Terming this as an example of a “reverse onus clause” the three-Judge Bench in **Rangappa** held that in determining whether the presumption has been rebutted, the test of proportionality must guide the determination. The standard of proof for rebuttal of the presumption under Section 139 of the Act is guided by a preponderance of probabilities.”

The law on the point of presumption under Section 118-A and 139 of the Negotiable Instruments Act has been summarized by Hon’ble Supreme Court in **Basalingappa vs. Mudibasappa, (2019) 5 Supreme Court**

Cases 418 in following manner :

“25.1 Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2 The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3 To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4 That it is not necessary for the accused to come in the witness box to support his defence.

25.5 It is not necessary for the accused to come in the witness box to support his defence.”

Reference of this was taken in yet another case by Hon’ble Supreme Court in **K.S. Ranganatha vs. Vitthal Shetty, 2021 SCC OnLine SC 1191**. It has been observed that -

“The position of law as noted above makes it crystal clear that

when a cheque is drawn out and is relied upon by the drawee, it will raise a presumption that it is drawn towards a consideration which is a legally recoverable amount; such presumption of course, is rebuttable by proving to the contrary. The onus is on the accused to raise a probable defence and the standard of proof for rebutting the presumption is on preponderance of probabilities”.

9 Now, after note has been taken about the legal position, it is required to be seen, whether the learned Trial Judge was justified in holding, after scanning the evidence that the presumption has been rebutted. As aforesaid, it was not necessary for the accused to enter the witness box, but in the cross-examination what has been brought would certainly be required to be taken note of. Herein this case, first and the foremost fact is that accused No.1 was the registered company. It had two Directors. One of the Directors i.e. Mr. Prabhakar Pandit expired on 08.05.2001. As per the contention of the appellant, the cheque in question was drawn on 23.04.2001. In the cross-examination of CW 1 Aniruddha it has come on record that he was present when there was an inspection after about one and half month of death of Prabhakar which was carried out by accused No.2 in the premises of Waluj. He has stated that he had the knowledge about the death of Prabhakar at that time. The normal conduct of the person in such circumstances would be to get a fresh cheque, when he comes to know that the signatory on the cheque is not alive and he is yet to present the said

cheque for encashment. Further, in his cross he has admitted that he had not made any attempt to get fresh cheque in place of cheque Exh.20. Note of this conduct is definitely required to be taken.

10 Though there is such presumption under Section 139 of the Negotiable Instruments Act; yet, when the complainant is coming with a case that such amount was outstanding, then, at least basic document ought to have been produced to link it with the cheque. It may not be to the extent that such and such amount was outstanding on the date of the cheque, but at least some document to show that there were transactions between them resulting in outstanding of the amount. Though it has been pointed out by the learned Advocate for the appellant that there are certain documents on record; yet those documents have not been proved and exhibited, so that it can be inferred that the material that was ordered from Gaziabad was for the purpose of accused No.1-company. In his cross-examination he has clearly admitted that he has not filed any original document to show and suggest that he had supplied the material to accused as per her demand. Another fact, that is also required to be noted is that neither the complainant nor the Trial Court has also considered a fact that the company consisted of two Directors only and after the death of one of the Directors what could be the fate of the company, whether it will exist as a company or it would become a

firm or a proprietary concern automatically or whether special efforts were required by accused No.2 to get its registration cancelled. Here, the complaint was filed also against accused No.1-company who could have represented the said company and whether accused Nos.1 and 2 can be taken as one and the same, all were the questions involved, those have not been addressed by the complainant properly. No doubt, we may not go into those aspects at this stage, but still it would have reflected on the point as to who would be responsible to the company.

11 Further, turning back to the point relating non production of documents by the complainant, though those appear to be available with him, definitely, adverse inference is required to be drawn. In his cross-examination he has admitted that there was agreement in between him and Pandit Instruments Private Limited in writing regarding mutual understanding to place the orders for supply of the material and make the payment. But then again he said that there is no written agreement available with him regarding mutual arrangement to debit the price amount in his account. He admitted that he has not filed document on record to show or to suggest that the price or material supplied by him to Pandit Instruments would be debited in his account in respect of Microtechnica. A company cannot run on mutual understanding as it is a statutory entity. But as regards

the complainant is concerned, when he had the documents he ought to have filed those on record. At least after the cross-examination he could have made certain attempts to produce those documents on record and get them proved. But he examined CW 2 Alhad Kulkarni, who was in fact employed in the past with accused No.1-company. In his cross-examination, this witness has clearly stated that he has not personal knowledge about the impugned transaction. In his examination-in-chief he has stated that during December, 1999 to June, 2000 the complainant has supplied various goods of various quality and quantity to the accused-company. There was a practice between the complainant and accused-company that complainant used to place orders and make payments for and on behalf of accused No.1-company and then company used to make payments of statutory dues for and on behalf of accused-company. If the witness is saying so, still the complainant is not accepting that he was the agent of the complainant, then it is surprising. Another fact is that the complainant has not explained as to why the company had his own could not have placed orders with those persons who are supplying the material. Why a middleman is required, is a question and there is no answer to the same in the evidence led by the complainant. At one place CW 2 Alhad Kulkarni has stated that being factory in-charge he was knowing the internal agreement between the complainant and the accused-company, but on the next breath in the cross-examination he has stated that

he had not seen the internal agreement between the accused-company and the complainant. He knew the fact only to the extent that the goods supplied by M/s. Microtechnica was received by the accused-company but then he has further stated that he had knowledge about the said internal agreement because he was informed by the complainant about the same during his tenure. It has come on record that CW 2 Alhad Kulkarni was the childhood friend of the complainant and a classmate. Under such circumstance, he was coming to the help of complainant, as the complainant requested cannot be ruled out. But his testimony cannot be relied because he has no full knowledge about the transactions.

12 The accused – DW 1 Madhuri has categorically stated that she herself and her late husband had formed a private limited company and she was one of the Directors, but according to her, she was the nominal Director and all the day to day affairs, management, administration and functions were looked after by her husband only. She has categorically stated that she never participated in day to day affairs of the company till death of her husband. No doubt, she has also tried to say that her husband has never issued cheque more than Rs.50,000/-, but it cannot be accepted from the view of that it is a company and may also require to issue cheque or other mode of payment for more than Rs.50,000/-. She has also tried to contend

that the disputed cheque was never issued by her husband, but no further step has been taken on behalf of the accused to challenge the handwriting on the disputed cheque. In the cross-examination conducted on behalf of the complainant, most of the time she has stated that she does not know anything about it or cannot recollect it. She has claimed ignorance, as to how much is the turnover of the accused No.1-company and about the employees employed in the company. Important point to be noted is that one photo copy of a purchase order dated 09.05.2000 was tried to be shown to her and it appears that complainant wanted to link it with the disputed cheque. Such attempt definitely failed, in view of the fact that the document was not original. Therefore, searching the cross-examination of DW 1 Madhuri could not destroy her defence that she was not responsible for the day to day affairs of the company.

13 On the basis of this evidence the learned Magistrate has acquitted both the accused, which this Court does not find to be perverse on the preponderance of probabilities. The presumption under Section 139 of the Negotiable Instruments Act was rebutted, so also, it was proved that the accused No.2 was not responsible for the day to day affairs of the company. The learned Trial Judge was right in dismissing the complaint. In one of the recent decisions by Hon'ble Apex Court i.e. **Rajaram Sriramulu Naidu** (since

deceased) Through L.Rs. vs. Maruthachalam (since deceased) through L.Rs., 2023 LiveLaw (SC) 46, Criminal Appeal No.1978 of 2013 decided by Hon'ble Apex Court on 18.01.2023, based on **Basalingappa** (supra) it was observed that *“the scope of interference in an appeal against acquittal is limited. Unless the High Court found that the appreciation of the evidence is perverse, it could not have interfered with the finding of acquittal recorded by the Trial Court”*.

14 There is no merit in the present appeal. It deserves to be dismissed. Accordingly, it is dismissed.

(Smt. Vibha Kankanwadi, J.)