SUPREME COURT OF INDIA

C. Antony

Vs.

K. G. Raghavan Nair

Crl.A.No.1748 of 1996

(N. Santosh Hegde and B. P. Singh JJ.)

01.11.2002

JUDGEMENT

Santosh Hegde, J.

1. This appeal by special leave is preferred against the judgment of the High Court of Kerala at Ernakulam dated 17-11-1995 made in Criminal Appeal No. 438/93 whereby the appellant herein was found guilty of an offence punishable under Section 138 of the Negotiable Instruments Act (the Act), and was convicted and sentenced to pay a fine of Rs. 37,500/- and in default to undergo RI for a period of 3 months. The High Court had further directed that out of the fine, if realised, a sum of Rs. 34,500/- should be paid to the respondent herein by way of a compensation.

2. Briefly stated, the prosecution case is that the respondent herein on 1-11-1990 had advanced a cash sum of Rs. 26,500/- for expansion of the appellant's hospital and towards the repayment of the said amount, the appellant had issued a cheque for the said sum which when presented to the bank, was dishonoured with an endorsement "Payment stopped by the drawer". The respondent after issuing the required statutory notice, filed a complaint against the appellant for offence under Section 138 of the Act, as stated above. The plea of the appellant was that no cheque was issued to the respondent nor any amount was borrowed from him. He stated that the cheque in question was a blank cheque issued to one Chandrappa Panicker in October, 1985 as security for future instalments of amount if due from the appellant in a chit transaction but the said Panicker did not return the cheque even after the chit transaction was over and the said cheque was misused by the respondent in collusion with said Panicker.

3. Learned 1st Class Magistrate, Cherthala, after trial, came to the conclusion that the respondent had failed to establish the payment of money as alleged by him. For this, he primarily relied on the fact that according to the complainant, the respondent did not know the appellant herein personally and he advanced the said sum of money at the instance of an advocate Vijay Kumar in the office of the said advocate. But the respondent had not examined said Vijay Kumar to prove this fact. The trial Court also held that the respondent

had not given any reason whatsoever for not examining this witness. The trial Court also held that the respondent's case that the cheque in question Ex. P-1 was filled up by the appellant and brought to the office of Vijay Kumar could not be accepted because of the difference in the ink used in writing of the name and amount in the cheque and the ink used in the signature portion of the cheque. This, according to the trial Court, showed that the case of the appellant that he had given a blank cheque signed was more probable. The trial Court also took into consideration the fact that though the respondent had filed a civil suit for the recovery of the amount allegedly paid to the appellant under the cheque in question did not pursue the same, hence, from this fact also the trial Court came to the conclusion that the appellant's version that the cheque in question was given in a blank condition to Chandrappa Panicker and the said Panicker being very close to the respondent had colluded with the respondent to make a false complaint against the appellant. The trial Court also took note of the fact that the said Chandrappa Panicker was seen in the Court hall during the trial but was not examined as a witness in support of the respondent's case. In this view of the matter, it came to the conclusion that the complainant/respondent has not proved his case and accordingly dismissed the complaint.

4. In appeal, however, the High Court took a contra view of the matter. The High Court held that the appellant had failed to produce the other counterfoils of his cheque-book to show whether other cheques had been issued between 1985 and 1990 to establish the fact that the cheque in question was in fact issued in the year 1985. The High Court also drew an adverse inference against the appellant for not examining himself. On the above basis, it found the appellant guilty of an offence punishable under Section 138 of the Act and, accordingly, convicted and sentenced him, as stated above.

5. We have heard learned Counsel for the parties as also perused the evidence as well as the judgments of the two Courts below. From the judgment of the trial Court, we notice that the learned Magistrate has given cogent reasons for not accepting the evidence led on behalf of the respondent and on that basis he came to the conclusion that the complainant/respondent has not established his case. While the High Court on reappreciation of the evidence, has come to a different conclusion on entirely new grounds without considering the material considered by the trial Court and as held above, convicted the appellant. While doing so, the High Court had lost sight of the fact that it was sitting as an appellate Court against a judgment of acquittal passed by the trial Court, therefore, there was an obligation on the part of the High Court to come to a definite conclusion that the findings of the trial Court are either perverse or the same are contrary to material on record because the High Court could not have substituted its finding merely because another contrary opinion was possible based on material on record. It was the duty of the High Court to have first come to the conclusion that the conclusions arrived at by the trial Court for good reasons are either unreasonable or as stated above, contrary to the material on record. In the absence of any such finding in our opinion, the High Court was in error in taking a contra view merely because another view was possible on the material on record.

6. This Court in a number of cases has held that though the appellate Court has full power to review the evidence upon which the order of acquittal is founded, still while exercising such

an appellate power in a case of acquittal, the appellate Court, should not only consider every matter on record having a bearing on the question of fact and the reasons given by the Courts below in support of its order of acquittal, it must express its reasons in the judgment which led it to hold that the acquittal is not justified. In those line of cases this Court has also held that the appellate Court must also bear in mind the fact that the trial Court had the benefit of seeing the witnesses in the witness-box and the presumption of innocence is not weakened by the order of acquittal, and in such cases if two reasonable conclusions can be reached on the basis of the evidence on record, the appellate Court should not disturb the finding of the trial Court. See *Bhim Singh Rup Singh v. State of Maharashtra*[1] *and Dharamdeo Singh and Ors. v. The State of Bihar*[2].

7. If we examine the judgment of the two Courts below in this appeal in the light of the law laid down by this Court in the abovecited cases, it is to be seen that the trial Court came to the conclusion that non-examination of advocate Vijay Kumar was fatal to the case of the complainant/respondent because it is the case of the respondent that he came to know the appellant through said Vijay Kumar and the amount in question was paid in the office of said Vijay Court. In such a situation, the trial Court came to the conclusion that when the appellant has set up a possible defence of having given a blank cheque to Chandrappa Panicker in regard to a chit transaction, therefore, it was necessary for the respondent-complainant to have examined the said Vijay Kumar to establish the fact that Vijay Kumar indeed, persuaded the respondent to advance the cash. We also think this was a very necessary piece of evidence to establish the fact that the respondent had in fact advanced a sum of Rs. 26,500/- to the appellant. From a perusal of the judgment of the High Court in this regard, we find that there is absolutely no discussion on this point at all. The non-consideration of this aspect of the case by the High Court, in our opinion, runs counter to the principles laid down in the above-referred judgments of this Court.

8. Then again, it is to be noticed that the trial Court also took into consideration the plea of the appellant that the cheque in question was given in a blank state to Chandrappa Panicker and he being a close friend of the respondent in collusion with each other misused the said cheque to defraud the appellant. The trial Court also observed that non-examination of Chandrappa Panicker has also weakened the case of the respondent especially in view of the fact that the Court had noticed that the said Chandrappa Panicker was seen in the premises of the Court-house at the time of trial. This is also a relevant factor on which the trial Court relied upon but the High Court did not consider the effect of the said default on the part of the respondent. The third circumstance relied upon by the trial Court is in regard to the difference in the ink found in the body of the cheque as well as in the signature of the appellant. It is the case of the respondent that the appellant had filled up the cheque in its entirety including its signature and had brought the cheque to the office of Vijay Kumar to be handed over to the respondent but the learned Magistrate on a perusal of the cheque, found that the ink used in the body of the cheque was different from the ink used in the signature on the cheque, therefore, he drew an inference that the case put forth by the respondent was doubtful, hence, could not be accepted. Even in this regard the High Court has failed to apply its mind. Having considered the findings delivered by the trial Court in regard to the above 3 points, we are of the opinion that the trial Court was justified in coming to the

said conclusion because of the above three deficiencies pointed out by the trial Court, and that the respondent's complaint ought to fail. In such a situation, we are of the opinion that the High Court fell in error in reappreciating the case of the respondent on a totally different perspective without coming to the conclusion that the findings given by the trial Court on the above three points are either irrelevant or contrary to material on record. Therefore, following the law laid down by this Court in the abovesaid cases of Bhim Singh Rup Singh (supra) and Dharamdeo Singh (supra), we are of the opinion that the High Court was in error in reversing the findings of acquittal recorded by the trial Court.

9. For the above reasons, this appeal succeeds and the same is allowed, setting aside the impugned judgment of the High Court.

Appeal allowed.

[1]*(1974 (3) SCC 762)*
[2]*(1976 (1) SCC 610)*