SUPREME COURT OF INDIA

Vijay

Vs.

Laxman & Anr.

Crl.A.No.261 of 2013

(T.S. Thakur and Gyan Sudha Misra,JJ.)

07.02.2013

JUDGMENT

Gyan Sudha Misra, J.

1. Leave granted.

2. This appeal by special leave which was heard at length at the admission stage itself is directed against the judgment and order dated 29.1.2010 passed by a learned single Judge of the High Court of Madhya Pradesh Bench at Indore, in Criminal Revision No. 926/2009, whereby the conviction and sentence of one year along with a fine of Rupees One Lakh and Twenty Thousand imposed on the appellant for commission of an offence under Section 138 of The Banking Public Financial Institutions and Negotiable Instruments (Amendment) Act, 1988 (For short the 'N.I. Act') has been set aside and the criminal revision was allowed. The complainant- appellant, therefore, has assailed the judgment and order of the High Court which reversed the concurrent findings of fact recorded by the trial court and set aside the order of conviction and sentence of the respondent.

3. In order to appreciate the merit of this appeal, the essential factual details as per the version of the complainant-appellant is that the respondent-accused (since acquitted) had borrowed a sum of Rs.1,15,000/- from the complainant-appellant for his personal requirement which was given to him as the relationship between the two was cordial. By way of repayment, the respondent issued a cheque dated 14.08.2007 bearing No.119682 amounting to Rs.1,15,000/- drawn on Vikramaditya Nagrik Sahkari Bank Ltd. Fazalapura, Ujjain in favour of the appellant. The complainant- appellant alleged that on 14.8.2007 when the cheque was presented to the bank for encashment the same was dishonoured by the bank on account of 'insufficient funds'. The complainant-appellant, therefore, issued a legal notice after a few days on 17.8.2007 to the accused-respondent which was not responded as the respondent neither replied to the notice nor paid the said amount.

4. It is an admitted fact that the respondent-accused is a villager who supplied milk at the dairy of the complainant's father in the morning and evening and his father made payment for the supply in the evening. Beyond this part, the case of the respondent-accused is that the complainant took security cheques from all the milk suppliers and used to pay the amount for one year in advance for which the milk had to be supplied. It is on this count that the respondent had issued the cheque in favour of the complainant which was merely by way of amount towards security which was meant to be encashed only if milk was not supplied. Explaining this part of the defence story, one of the witnesses for the defence Jeevan Guru deposed that when any person entered into contract to purchase milk from any person in the village, the dairy owner i.e. the complainant's side made payment of one year in advance and in return the milk supplier like the respondent issued cheques of the said amount by way of security. In view of this arrangement, the accused Laxman started supplying milk to the complainant's father. In course of settlement of accounts, when accused Laxman asked for return of his security cheque, since he had already supplied milk for that amount to the complainant's father Shyam Sunder, he was directed to take back the cheque later on. The accused insisted for return of the security cheque since the account had been settled but the cheque was not given back to the respondent as a result of which an altercation took place between the respondent/accused and the milk supplier due to which the accused lodged a report at the police station on 13.8.2007, since the complainant's father Shyam Sunder also assaulted the respondent-accused and abused him who had refused to return the cheque to the respondent-accused which had been issued by him only by way of security. As a counter blast, the complainant presented the cheque for encashment merely to settle scores with the Respondent/milk supplier.

5. The complaint-appellant, however, filed a complaint under Section 138 of the N.I. Act before the Judicial Magistrate 1st Class, Ujjain, who while conducting the summary trial prescribed under the Act considered the material evidence on record and held the Respondent guilty of offence under Section 138 of the N.I. Act and hence recorded an order of conviction of the respondent-accused due to which he was sentenced to undergo rigorous imprisonment for one year and a fine of Rs.1,20,000/- was also imposed. The respondent-accused feeling aggrieved of the order preferred an appeal before the IXth Additional Sessions Judge, Ujjain, M.P. who also was pleased to uphold the order of conviction and hence dismissed the appeal.

6. The respondent-accused, thereafter, filed a criminal revision in the High Court against the concurrent judgment and orders of the courts below but the High Court was pleased to set aside the judgment and orders of the courts below as it was held that the impugned order of conviction and sentence suffered from grave miscarriage of justice due to non- consideration of the defence evidence of rebuttal which demolished the complainant's case.

7. Assailing the judgment and order of reversal passed by the High Court in favour of the respondent-accused acquitting him of the offence under Section 138 of the Act, learned counsel appearing for the complainant-appellant submitted that the learned single Judge of the High Court ought not to have interfered with the concurrent findings of fact recorded by the courts below by setting aside the judgment and order recording conviction of the

respondent and sentencing him as already indicated hereinbefore. The High Court had wrongly appreciated the material evidence on record and held that the respondent-accused appeared to be an illiterate person who can hardly sign and took notice of some dispute affecting the complainant's case since an incident had taken place on 13.8.2007, while the alleged cheque was presented on 14.8.2007 for encashment towards discharge of the loan of Rs.1,15,000/-. Learned counsel also assailed the finding of the High Court which recorded that the cheque was issued by way of security of some transaction of milk which took place between the respondent-accused and father of the complainant- appellant and thus dispelled the complainant-appellant's case.

8. Learned counsel representing the respondent-accused however refuted the complainant's version and submitted that the case lodged by the complainant-appellant against the respondent was clearly with an ulterior motive to harass the respondent keeping in view the grudge in mind by lodging a false case alleging that personal loan of Rs.1,15,000/- was granted to the respondent and the answering respondent had issued cheque towards the repayment of said loan which could not stand the test of scrutiny of the High Court as it noticed the weakness in the evidence led by the complainant.

9. Having heard the learned counsels for the contesting parties in the light of the evidence led by them, we find substance in the plea urged on behalf of the complainant-appellant to the extent that in spite of the admitted signature of the respondent-accused on the cheque, it was not available to the respondent-accused to deny the fact that he had not issued the cheque in favour of the complainant for once the signature on the cheque is admitted and the same had been returned on account of insufficient funds, the offence under Section 138 of the Act will clearly be held to have been made out and it was not open for the respondent- accused to urge that although the cheque had been dishonoured, no offence under the Act is made out. Reliance placed by learned counsel for the complainant-appellant on the authority of this Court in the matter of K.N. Beena vs. Muniyappan And Anr.[1] adds sufficient weight to the plea of the complainant-appellant that the burden of proving the consideration for dishonour of the cheque is not on the complainant-appellant, but the burden of proving that a cheque had not been issued for discharge of a lawful debt or a liability is on the accused and if he fails to discharge such burden, he is liable to be convicted for the offence under the Act. Thus, the contention of the counsel for the appellant that it is the respondent-accused (since acquitted) who should have discharged the burden that the cheque was given merely by way of security, lay upon the Respondent/ accused to establish that the cheque was not meant to be encashed by the complainant since respondent had already supplied the milk towards the amount. But then the question remains whether the High Court was justified in holding that the respondent had succeeded in proving his case that the cheque was merely by way of security deposit which should not have been encashed in the facts and circumstances of the case since inaction to do so was bound to result into conviction and sentence of the Respondent/Accused.

10. It is undoubtedly true that when a cheque is issued by a person who has signed on the cheque and the complainant reasonably discharges the burden that the cheque had been

issued towards a lawful payment, it is for the accused to discharge the burden under Section 118 and 139 of the N.I. Act that the cheque had not been issued towards discharge of a legal debt but was issued by way of security or any other reason on account of some business transaction or was obtained unlawfully. The purpose of the N.I. Act is clearly to provide a speedy remedy to curb and to keep check on the economic offence of duping or cheating a person to whom a cheque is issued towards discharge of a debt and if the complainant reasonably discharges the burden that the payment was towards a lawful debt, it is not open for the accused/signatory of the cheque to set up a defence that although the cheque had been signed by him, which had bounced, the same would not constitute an offence.

11. However, the Negotiable Instruments Act incorporates two presumptions in this regard: one containing in Section 118 of the Act and other in Section 139 thereof. Section 118 (a) reads as under:-

> "118. Presumption as to negotiable instruments.—Until the contrary is proved, the following presumptions shall be made—
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> 1. of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;" Section 139 of the Act reads as under:-
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> "139. Presumption in favour of holder.-It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability."

12. While dealing with the aforesaid two presumptions, learned Judges of this Court in the matter of P. Venugopal vs. Madan P. Sarathi[2] had been pleased to hold that under Sections 139, 118 (a) and 138 of the N.I. Act existence of debt or other liabilities has to be proved in the first instance by the complainant but thereafter the burden of proving to the contrary shifts to the accused. Thus, the plea that the instrument/cheque had been obtained from its lawful owner or from any person in lawful custody thereof by means of an offence or fraud or had been obtained from the maker or acceptor thereof by means of an offence or fraud or for unlawful consideration, the burden of disproving that the holder is a holder in due course lies upon him. Hence, this Court observed therein, that indisputably, the initial burden was on the complainant but the presumption raised in favour of the holder of the cheque must be kept confined to the matters covered thereby. Thereafter, the presumption raised does not extend to the extent that the cheque was not issued for the discharge of any debt or liability which is not required to be proved by the complainant as this is essentially a question of fact and it is the defence which has to prove that the cheque was not issued towards discharge of a lawful debt.

13. Applying the ratio of the aforesaid case as also the case of K.N. Beena vs. Muniyappan And Anr. (supra), when we examine the facts of this case, we have noticed that although the

respondent might have failed to discharge the burden that the cheque which the respondent had issued was not signed by him, yet there appears to be a glaring loophole in the case of the complainant who failed to establish that the cheque in fact had been issued by the respondent towards repayment of personal loan since the complaint was lodged by the complainant without even specifying the date on which the loan was advanced nor the complaint indicates the date of its lodgement as the date column indicates 'nil' although as per the complainant's own story, the respondent had assured the complainant that he will return the money within two months for which he had issued a post- dated cheque No.119582 dated 14.8.2007 amounting to Rs.1,15,000/- drawn on Vikramaditya Nagrik Sahkari Bank Ltd., Ujjain. Further case of the complainant is that when the cheque was presented in the bank on 14.8.2007 for getting it deposited in his savings account No.1368 in Vikarmaditya Nagrik Sahkari Bank Ltd. Fazalpura, Ujjain, the said cheque was returned being dishonoured by the bank with a note 'insufficient amount' on 14.8.2007. In the first place, the respondent-accused is alleged to have issued a post-dated cheque dated 14.8.2007 but the complainant/appellant has conveniently omitted to mention the date on which the loan was advanced which is fatal to the complainant's case as from this vital omission it can reasonably be inferred that the cheque was issued on 14.8.2007 and was meant to be encashed at a later date within two months from the date of issuance which was 14.8.2007. But it is evident that the cheque was presented before the bank on the date of issuance itself which was 14.8.2007 and on the same date i.e. 14.8.2007, a written memo was received by the complainant indicating insufficient fund. In the first place if the cheque was towards repayment of the loan amount, the same was clearly meant to be encashed at a later date within two months or at least a little later than the date on which the cheque was issued: If the cheque was issued towards repayment of loan it is beyond comprehension as to why the cheque was presented by the complainant on the same date when it was issued and the complainant was also lodged without specifying on which date the amount of loan was advanced as also the date on which compliant was lodged as the date is conveniently missing. Under the background that just one day prior to 14.8.2007 i.e. 13.8.2007 an altercation had taken place between the respondent-accused and the complainant-dairy owner for which a case also had been lodged by the respondent-accused against the complainant's father/dairy owner, missing of the date on which loan was advanced and the date on which complaint was lodged, casts a serious doubt on the complainant's plea. It is, therefore, difficult to appreciate as to why the cheque which even as per the case of the complainant was towards repayment of loan which was meant to be encashed within two months, was deposited on the date of issuance itself. The complainant thus has miserably failed to prove his case that the cheque was issued towards discharge of a lawful debt and it was meant to be encashed on the same date when it was issued specially when the complainant has failed to disclose the date on which the alleged amount was advanced to the Respondent/Accused. There are thus glaring inconsistencies indicating gaping hole in the complainant's version that the cheque although had been issued, the same was also meant to be encashed instantly on the same date when it was issued.

14. Thus, we are of the view that although the cheque might have been duly obtained from its lawful owner i.e. the respondent-accused, it was used for unlawful reason as it appears to

have been submitted for encashment on a date when it was not meant to be presented as in that event the respondent would have had no reason to ask for a loan from the complainant if he had the capacity to discharge the loan amount on the date when the cheque had been issued. In any event, it leaves the complainant's case in the realm of grave doubt on which the case of conviction and sentence cannot be sustained.

15. Thus, in the light of the evidence on record indicating grave weaknesses in the complainant's case, we are of the view that the High Court has rightly set aside the findings recorded by the Courts below and consequently set aside the conviction and sentence since there were glaring inconsistencies in the complainant's case giving rise to perverse findings resulting into unwarranted conviction and sentence of the respondent. In fact, the trial court as also the first appellate court of facts seems to have missed the important ingredients of Sections 118 (a) and 139 of the N.I. Act which made it incumbent on the courts below to examine the defence evidence of rebuttal as to whether the respondent/accused discharged his burden to disprove the complainant's case and recorded the finding only on the basis of the complainant's version. On scrutiny of the evidence which we did to avoid unwarranted conviction and miscarriage of justice, we have found that the High Court has rightly overruled the decision of the courts below which were under challenge as the trial court as also the 1st Appellate Court misdirected itself by ignoring the defence version which succeeded in dislodging the complainant's case on the strength of convincing evidence and thus discharged the burden envisaged under Sections 118 (a) and 139 of the N.I. Act which although speaks of presumption in favour of the holder of the cheque, it has included the provisos by incorporating the expressions "until the contrary is proved" and "unless the contrary is proved" which are the riders imposed by the Legislature under the aforesaid provisions of Sections 118 and 139 of the N.I. Act as the Legislature chooses to provide adequate safeguards in the Act to protect honest drawers from unnecessary harassment but this does not preclude the person against whom presumption is drawn from rebutting it and proving to the contrary.

16. Consequently, we uphold the judgment and order of acquittal of the respondent passed by the High Court and hence dismissed this appeal.