(2019) 12 JH CK 0205

In the Jharkhand High Court

Case No : Criminal Revision No. 950 Of 2013

Anokhey Lal — APPELLANT

Vs

State Of Jharkhand And Ors — RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Negotiable Instruments Act, 1881 — Section 118, 138

Citation : (2019) 12 JH CK 0205

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Sajid Yunus, Rakesh Kr. Sinha

Final Decision : Dismissed

Judgement

The instant application has been preferred by the petitioner-complainant against the judgment dated 19th August, 2013 passed by the learned 3rd

Additional Sessions Judge, Hazaribagh whereby the appeal preferred by the opposite party no.2 has been allowed and the judgment of conviction and

order of sentence dated 9th February, 2012 passed by the learned Judicial Magistrate, Hazaribagh in Complaint Case No. 1353 of 2006 has been set

aside.

Shorn of unnecessary detail, the facts given rise to this appeal are that, the accused and the complainant have jointly purchased a truck bearing

registration No. BR-13B-8119G out of contribution from their livelihood. A partnership agreement dated 22.11.1999 was also executed and in due

course both the parties came to an amicable settlement and in view of that settlement the complainant left the joint business on the assurance that, the

accused will return the amount of Rs.40,000/- to the complainant. It is alleged that, the accused issued two cheques bearing No. 335923 dated

15.10.2006 and 335924 dated 17.10.2006 of the Punjab & Sindh Bank, Hazaribagh Branch to the complainant. It is alleged that, though the cheques

were produced before the said Bank on 18.10.2006 by the complainant, the cheques were returned unpaid by the Bank with a certificate that,

â??Fund insufficientâ? as well as â??payment stopped by the drawerâ?. It is further alleged that, the complainant sent a registered notice on

30.10.2006 through his lawyer on the accused with request to pay the cheque amount of Rs.40,000/- within 15 days from the date of receipt of the

notice. It is further alleged that, on 4.11.2006 at about 4 PM the accused threatened the complainant and told him that, he is not going to give any

money to him and thereafter the complainant filed a case on 20.11.2006.

Learned counsel for the petitioner submits that the learned appellate Court without appreciating the finding given by the learned trial court has

acquitted the petitioner. The learned appellate court should have appreciated the fact that though the complaint was filed premature but at the same

time failed to appreciate the fact that only on that ground the complaint case will not fail. The learned appellate court further did not give any finding

as to why he has converted the conviction of the O.P.No.2 in acquittal. He further submits that the impunged order suffers from infirmity and the

order passed by the learned trial Court should be restored and the opposite party no.2 be directed to pay compensation amount of Rs.80,000/- as

awarded by the learned trial Court.

Learned counsel for the O.P. No.2 submits that the complaint case which has been filed on 20.11.2006 was premature. He further submits that it is

not only that the complaint case was premature but at the same time the petitioner-complainant had committed forgery by marking tick over the

reason No. 10 of Ext-2. On perusal of the Ext-2, it clearly transpires that the bank authority mentioned the reason No. 15 â??Payment stopped by

drawer reported lostâ?. He further submits that the deposition of D.W.2 who proved maintenance register of the Bank which has been marked as

Ext-E clearly transpires that only reason No. 15 has been mentioned and the petitioner-complainant with a malafide intention manipulated Ext-2 by

marking on reason No. 10 also and produced the document. He further submits that even in one cheque, the word â??selfâ? has been written above

the name of petitioner. So the petitioner was inhabit of manipulating the documents and as such learned appellate court has not committed any error in

setting aside the judgment of conviction and order of sentence passed by the learned trial Court.

Heard learned counsel for the petitioner-complainant and the learned counsel for the opposite party no.2. At the outset I would like to state that the

Honâ??ble Apex Court in the case of M/s Sarav Investment & Financial Consultants Pvt. Ltd. & Anr. Vs. Llyods Register of Shipping Indian Office

Staff Provident Fund & Anr as reported in 2008 (1) East Cr. C 253 (SC)has opined that the provisions under Section 138 of the N.I. Act warrants

strict construction; service of notice is the statutory requirement in initiation of a criminal proceeding. Communication to O.P. No.2 about the fact of

dishonouring of the cheque and calling upon him to pay the amount within 15 days is imperative in character. In the instant case one cheque was

dishonoured on 15.10.2006 and another cheque was dishonoured on 17.10.2006. The notice was issued to the O.P. No.2 on 31.10.2006 which was

served on him on 11.11.2006 as such, the cause of action will be reckoned after 15 days i.e. on 26.11.2006. However, the instant complaint case was

filed by the petitioner-complainant on 20.11.2006 itself that is prior to the initiation of statutory period of 15 days. The period of calling upon the

accused to pay amount within 15 days is imperative in character. It is ascertained law that the period of one month for filing the complaint will be

reckoned from the date immediately falling the date in which the period of 15 days from the date of receipt of the notice by the drawer expires. This

aspect of the matter was not considered by the learned trial Court while convicting the O.P.No.2.

Another point of determination is regarding the contention of the petitioner was with respect to bouncing of the instrument due to â??stop paymentâ?

or â??insufficient fundâ?. From the record it appears that the cheques were produced before the said bank on 12.10.2006 by the complainant but the

cheques were returned unpaid by the bank with certificate that â??fund insufficientâ? as well as â??payment stopped by the drawerâ?. It further

appears from the record that the learned trial court in its judgment dated 09.02.2012 has categorically observed that the complainant has committed

forgery by marking tick over the reason No. 10 of the memorandum of slip for dishonour of cheque (Ext-2) as in sufficient funds. It further reveals from the record that the Ext-2 issued by the bank, the bank authority has mentioned reason No. 15 i.e. â??payment stopped by drawer reported lostâ??

as the cause for non-payment of the cheque. It also appears from the record that this manipulation has been proved as per the deposition from D.W.2

who proved the â??maintenance registerâ? of the bank which has been marked as Ext-E. The only reason which has been shown by the bank for

dishonouring the cheque was â??payment stopped by drawer reported lostâ??.

In view of the aforesaid facts it is crystal clear that the petitioner-complainant has manipulated Ext-2 by marking tick on reason No. 10. As per the

said document, it transpires that the cheques were stopped on 17.10.2006. In the case of Raj Kumar Khurana Vs. State of (N.C.T. of Delhi) & Anr.

As reported in 2009 (3) East Cr. C.153 (SC) the Honâ??ble Apex Court has held that dishonour of cheque on the ground that cheque was reported

lost by drawer would not bring the matter within the mischief of the provisions of Section 138 of the Act. In this regard para 11 and 12 is reproduced

herein below;

â??11. Section 138 of the Act moreover provides for a penal provision. A penal provision created by reason of a legal fiction must receive

strict construction. Such a penal provision, enacted in terms of the legal fiction drawn would be attracted when a cheque is returned by the

bank unpaid. Such non-payment may either be: (i) because of the amount of money standing to the credit of that account is insufficient to

honour the cheque, or (ii) it exceeds the amount arranged to be paid from that account by an agreement made with that bank.

Before a proceeding thereunder is initiated, all the legal requirements therefor must be complied with. The Court must be satisfied that all

the ingredients of commission of an offence under the said provision have been complied with.

The parameters for invoking the provisions of Section 138 of the Act, thus, being limited, we are of the opinion that refusal on the part of the

bank to honour the cheque would not bring the matter within the mischief of the provisions of Section 138 of the Act.

12.The Court while exercising its jurisdiction for taking cognizance of an offence under Section 138 of the Act was required to consider only

the allegations made in the complaint petition and the evidence of the complainant and his witnesses, if any. It could not have taken into

consideration the result of the complaint petition filed by the respondent No.2 or the closer report filed by the Superintendent of Police in the

First Information Report lodged by the appellant against him.â??

On this score alone the complaint case will fail. Needless to say that I am not going on any factual aspects with respect to over writing over the

cheque i.e. â??selfâ? as well as â??Anokhey Lalâ? mentioned over the cheque because obviously any self cheque does not require that the name of

any person should be written on the front side of the cheque. Further, dishonour of such self-drawn cheque does not amount to penal offence under

Section 138 of the N.I.Act. In this regard Honâ??ble Gauhati High Court in the caseD r. Jiten Barkakoti Vs. Subrata Patangia & Anr. as reported in

2006(1) East. Cr. C. 158 (Gau) laid down the law as under;

â??8. Reverting to the facts of the present case, we find that Ext.I is a self-drawn cheque. It was not issued in favour of the complainant. It

was also not endorsed in favor of the complainant. Hence, the provisions of Sections 118 and 139 of the Act are not applicable as the

complainant is neither a payee nor a holder in due course and the dishonour of such self-drawn cheque does not amount to penal offence

under Section 138 of the N.I.Act. We, therefore, hold that the trial Court, as well as, the appellate Court failed to correctly appreciate the

provisions of the N.I.Act in holding the petitioner-accused Dr. Jiten Barkakoti guilty of the offence under Section 138 of the N.I.Act for

dishonour of a self-drawn cheque, which was never endorsed in favor of any one.â??

Needless to say that this is a peculiar case where the complainant has manipulated not only the cheque/instrument but also the returned memo sent by

the bank.

The learned trial Court though admitted all these facts but convicted the O.P. No.2, however, the learned appellate Court has rightly appreciated the

entire evidence and acquitted the petitioner. I do not find any irregularity in the judgment passed by the learned appellate Court. The petitioner has

failed to point out any error in the order so as to warrant any interference by this Court.

As a result, the instant revision application is dismissed.

Let the lower court record be sent back to the court concerned forthwith.

