

(2009) 07 MP CK 0076
In the Madhya Pradesh High Court

George Construction Private Ltd. and Another	APPELLANT
Vs	
B.C. Patel and Company and Another	RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 1 BC 134

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Judgement

N.K. Mody, J.—Being aggrieved by the judgment dated 28.11.2008 passed by XVIth Additional Sessions Judge, (Fast Track), Indore in Cr.A. No. 786/07 whereby the judgment dated 19.9.2007 passed by JMFC, Indore in Criminal Case No. 33244/07 whereby the petitioners were convicted for an offence punishable u/s 138 of Negotiable Instruments Act (which shall be referred hereinafter as an "Act") with fine of Rs. 30,000/- each and in case of default petitioner No. 2 was directed to be convicted for a period of three months SI, the present petition has been filed.

2. Short facts of the case are that a private complaint was filed by the respondent No. 1 u/s 138 of the Act on 24.6.2002 wherein it was alleged that petitioner No. 1 is a private company incorporated and registered under the Companies Act and petitioner No. 2 and Mrs. Anne Reena George are its Managing Director and Director. It was alleged that petitioner No. 1 Company is indulged in the business of construction of house and complexes. It was alleged that on 18.9.2001 on the request of petitioners respondent supplied Tor Steel and M.S. Round to the petitioner Company vide bill dated 18.9.2001. The goods were transported through Shree Couriers, 827 Lohamandi, Indore on 18.9.2001. The goods were duly received and acknowledged by the petitioners vide receipt dated 18.9.2001 itself. It was alleged that in lieu of the prise the cheque was issued by the petitioners on 9.11.2001 for Rs. 90,000/-. The said cheque was signed by the petitioner No. 2 as Managing Director of the petitioner No. 1

company. Upon presentation the said cheque was returned with a remark "funds insufficient". It was alleged that notice of demand was sent which was duly served but in spite of that cheque amount was not paid. It was alleged that petitioners have committed an offence which is punishable u/s 138 of the Act. It was prayed that after taking cognizance petitioners be convicted. Upon the complaint cognizance was taken by the learned trial Court. After issuance of notice and also after framing of charge and recording of evidence petitioners were convicted as stated above, against which an appeal was filed which was dismissed and conviction was maintained, hence this revision petition.

3. Learned Counsel for the petitioners argued at length and submits that it is not disputed that the goods were received by the petitioners on 18.9.2001 and the cheque was also issued on 9.11.2001, but the amount of Rs. 30,000/- was paid by the petitioners before issuance of notice dated 13.5.2002 and further amount of Rs. 30,000/- was paid by the petitioners prior to the filing of the complaint. It is submitted that thus the petitioners has paid a sum of Rs. 60,000/- and cognizance of this fact was taken by the learned Courts below in the judgment. It is submitted that in the facts and circumstances of the case, since the petitioners were not indebted for a sum of Rs. 90,000/- on the date of issuance of cheque, therefore, the learned Courts below committed error in convicting the petitioners u/s 138 of the Act. Learned Counsel placed reliance on a decision of Madras High Court in the matter of Angu Pammeshwari Textiles v. Shri Rajam 2001 DCR 648, wherein Madras High Court has held that the cheque drawn should be towards the discharge of either the whole debt or part of the liability. It was further held that if the cheque is more than the amount due on the day when the cheque was presented, therefore, it cannot be said that the cheque was towards discharge of either the whole or part of any debt or the liability. Further reliance is placed on a decision of Bombay High Court in the matter of Smt. Taraben Jamnadas v. Narendra Kumar Khetsi I (2004) CUT 238 (SC) : AIR 2008 (Bom.)133 , wherein the dishonour of cheque issued was for a sum of Rs. 17,47,050/- while bank statement shows payment of Rs, 10,14,000/-, Bombay High Court held that dishonoured cheque of Rs. 17,47,050/- could not be treated to be cheque in discharge of loan liability for Rs. 15,00,000/- and in the circumstances acquittal of accused was held proper.

4. On the strength of aforesaid decisions, learned Counsel submits that the petition filed by the petitioners be allowed.

5. Learned Counsel for respondent No. 1 submits that after due appreciation of evidence learned Courts below passed the impugned order, which requires no interference. It is submitted that the petition filed by the petitioners be dismissed.

6. In the present case, since the cheque was for Rs. 90,000/- and prior to issuance of the notice for demand a sum of Rs, 30,000/- was paid by the petitioner and thereafter also a sum of Rs. 30,000/- was paid by the petitioners, therefore, it cannot be said that any offence was committed by the petitioners u/s 138 of the Act. In view of this, this Court is of the view that the learned Courts

below committed error in holding the petitioners liable for the commission of the offence punishable u/s 138 of the Act.

7. However since petitioners themselves have admitted that they have received goods and they have indebted for a sum of Rs. 30,000/-, therefore, learned Courts below committed no error in directing the petitioners to pay a sum of Rs. 30,000/- each as compensation payable to the respondent No. 1. However since the transaction was of the year 2001 and Rs. 60,000/- was also paid by the petitioners, therefore, the petitioners shall be liable to pay Rs. 25,000/- each instead of Rs. 30,000/-. In view of this, the petition filed by the petitioners is allowed in part. Conviction of the petitioners u/s 138 of the Act is set aside with a direction to the petitioners to pay a sum of Rs. 25,000/- each as compensation to respondent No. 1. In case of default respondent No. 1 shall be at liberty to recover the amount in accordance with law.

8. With the aforesaid observations, petition stands disposed of.

C.C. as per rules.