

(2008) 09 BOM CK 0065
In the Bombay High Court
Case No : Criminal Appeal No. 40 of 2008

Mr. Evan Noronha

APPELLANT

Vs

Mr. Lloyd Joseph Siqueira and State of Goa

RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 118, 138, 139

Citation : (2010) 1 ALD(Cri) 17

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : M. Fernandes, for the Appellant; R.G. Ramani, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—This is complainant's appeal and is filed against the acquittal of the accused u/s 138 of the Negotiable Instruments Act, 1881, by Judgment dated 15-1-2008 of the learned J.M.F.C., Margao. By consent heard forthwith.

2. The case of the complainant, in brief, was that at the request of the accused the complainant on 2-1-2002 advanced to the accused a sum of Rs. 5,00,000/- against a hundi of the same date and towards the repayment of the said loan, the accused issued a cheque bearing No. 468393 dated 7-5-2002 which cheque, admittedly, when presented for collection bounced and the complainant having sent a notice, the same was not replied to nor complied with, and as such the complaint was filed and the complainant examined himself in support of his complaint.

3. On the other hand, it was the case of the accused, that he had not received any money from the complainant and that he came to know the complainant only on 2-1-2002 when he was introduced to the accused by one Raison Almeida. It was also the case of the accused that the said Raison Almeida and the complainant forced him to sign some hundis and notarized the same for an illegal purpose of the said complainant and Raison Almeida. In support of his plea, the

accused examined himself and the Bank Manager of Central Bank, the Notary before whom the hundi was executed, and two Police Officers who investigated the matter as regards the allegation that the said hundis and/or the cheque were executed under threat. P.S.I. Prabhudessai/DW5 found that there was no threat given to the accused.

4. Be that as it may, the learned trial Court came to the conclusion that the defence of the accused appeared to be probable, firstly, because inspite of the letter dated 5-1-2002 i.e. three days of the execution of the hundi, the complainant chose to remain silent and did not act, and, secondly, the hundi shows the name of the complainant as purchaser, when in his cross-examination the complainant had stated that the hundi was duly executed and was handed over to him which facts raised a suspicion as to whether the complainant had come in possession of the cheque on 7-2-2002. The learned Magistrate also took note of the fact that previously the accused had not issued any cheques which were type written which statement fortified the plea of the accused that there was no occasion for the accused to have given type written cheque to the complainant. The learned Magistrate therefore proceeded to acquit the accused as aforesaid.

5. There is no doubt that the accused has signed the subject cheque regarding which there was no dispute and as such there was a presumption available to the complainant in terms of Sections 118 and 139 of the said Act. However, it was a specific case of the complainant that the subject cheque was given by the accused to the complainant on 7-5-2002 in repayment of the loan given by the complainant to the accused on 2-1-2002. As far as the giving of the cheque on 7-5-2002 is concerned, the presumption available to the complainant was sufficiently rebutted by the accused by production of letter dated 5-1-2002-Exh.23/C, letter dated 24-1-2002 written to the Bank and complaint dated 1-2-2002 to the Police. The accused had categorically stated in his evidence before the Court having sent the said letter dated 5-1-2002 under certificate of posting.

There was no denial on behalf of the complainant, as regards the receipt of the said letter and the learned Magistrate, in such a situation, was certainly justified in concluding that the complainant had received the said letter sent under certificate of posting. The complainant suppressed this letter in not referring to it in his complaint. The letter dated 24-1-2002 was proved through Santosh, the Bank Manager and the complaint to the Police through P.S.I. Prabhudessai. The letter dated 5-1-2002 to the complainant as well as the letter dated 24-1-2002 to the Bank were sent admittedly prior to the date of issuance of the cheque and show that the plea taken by the accused i.e. under what circumstances the cheque to the complainant came to be issued, and, therefore the said evidence was more than sufficient to rebut the presumption available to the complainant under the relevant sections of the said Negotiable Instrument Act, 1881. In fact it has been submitted by Shri Ramani that all cases filed in relation to the

cheques mentioned on letter dated 24-1-2002 addressed to the Branch Manager have ended in acquittal.

6. After the accused had succeeded to rebut the said presumption it was necessary for the complainant to have proved the debt. The learned Magistrate has observed in para 35 of the judgment that "therefore, the totality of the circumstance that the complainant advanced a huge sum of money as investment in business to a person whose antecedents in business was not known to him, without issuing any receipt or under any agreement, so also the act of the complainant to deposit the cheques inspite of being aware that the complainant has denied his liability and intended to issue stop payment instructions to his banker makes the complainant version highly improbable and the presumption u/s 139 of the Negotiable Instrument Act cannot be raised in favour of the complainant".

7. The complainant has conceded that he was not present when the hundi was executed. The Notary before whom the said hundi was executed have not stated anything about passing of consideration. The complainant himself has stated that he was not present at the time of execution of the hundi. Moreover, as rightly pointed out by the learned Magistrate the hundi paper itself was purchased by the complainant himself. The said hundi further shows that no interest was chargeable while according to the complainant he had lent the money because the accused had promised higher rate of interest. Therefore, it is more probable that the hundi was executed in a manner alleged by the accused. It is difficult to accept that the complainant had lent any money on interest in a situation where the complainant himself did not even know what business the accused was doing. First, the complainant stated that he had handed over the money to the accused on 2-11-2002 by withdrawing the amount from his Bank and then he stated that he did not withdraw the said amount from the Bank but he collected from his brother, and encashed some children's deposits. Nothing prevented the complainant from producing documentary evidence in support of the said statements. Suffice it to say, this is a case where the accused had sufficiently rebutted the presumptions available to the complainant, and, then the complainant had failed to prove the debt itself. The view taken by the learned Magistrate in the facts and circumstances of the case is a plausible view and cannot be faulted.

8. There is no merit in this appeal and, therefore, the same is hereby dismissed.