
(2017) 05 BOM CK 0112
In the Bombay High Court
Case No : 23 of 2014

Ms. Anu Tripathi, wife of M.K. Sharma APPELLANT
Vs
Mr. Anil Kumar Gupta, & Ors. RESPONDENT

Date of Decision : 02-05-2017

Acts Referred:

[Negotiable Instruments Act, 1881](#), [Section 138](#) - Dishonour of cheque for insufficiency, etc., of funds in the account

Citation : (2017) 05 BOM CK 0112

Hon'ble Judges : M. S. Sonak

Bench : SINGLE BENCH

Advocate : Thalmann Pereira, C.A. Coutinho

Final Decision : Dismissed

Judgement

1. Heard Mr. Thalmann Pereira for the appellant and Mr. C. Coutinho for the respondent nos. 1 and 2.
2. The appellant appeals against acquittal granted by the Appeal Court to respondent nos. 1 and 2 for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act).
3. The appellant-complainant, filed a complaint dated 25.11.2009 before the learned Magistrate, which came to be registered as Criminal Case No. 146/OA/NI/2009/D, alleging that the cheque dated 20.09.2009 in an amount of Rs.1 lakh drawn on the UTI Bank Limited, Margao branch, issued by the respondent nos. 1 and 2, was dishonoured with the remark "Account Closed". Despite of the receipt of necessary standing instructions, since, no payment was effected within the prescribed period, the appellant alleged that the respondent nos. 1 and 2 have committed an offence under Section 138 of the N.I. Act.
4. The learned Magistrate by judgment and order dated 27.04.2011, convicted the respondent nos. 1 and 2 and sentenced them to imprisonment and directed payment of fine. The respondent nos. 1 and 2 instituted a Criminal Appeal No.

39/2011. In the said Appeal, respondent nos. 1 and 2 applied for leave to lead additional evidence. This was declined by the Appeal Court. The respondent nos. 1 and 2 carried the matter to this Court and this Court, permitted the respondent nos. 1 and 2 to lead additional evidence in the context of certain MOU, pending Civil Suit and disputes between the parties. Such evidence was recorded by the learned Magistrate, but, was made over to the Appeal Court for consideration in Criminal Appeal No. 39/2011.

5. Ultimately, the Appeal Court by impugned judgment and order dated 07.08.2013 has set aside the learned Magistrate's judgment and order dated 27.04.2011, by which the Magistrate has convicted the respondent nos. 1 and 2, and acquitted the respondent nos. 1 and 2.

6. The appellant-complainant, aggrieved by the impugned judgment and order dated 07.08.2013, appeals against the acquittal of the respondent nos. 1 and 2.

7. Mr. Pereira, learned Counsel for the appellant submits that there are compelling reasons to warrant interference in the impugned judgment and order. He submits that the view taken by the learned Appeal Court is not reasonable and several material aspects of the evidence have been ignored. He submits that the Appeal Court has paid no credence to the presumptions, which go with the issue of Negotiable Instruments. He submits that the relationship of the Advocate and Client, as between the appellant and respondent nos. 1 and 2, has been established. He submits that there is ample material on record to show that the cheque in question was issued towards part discharge of the liability towards payment of professional fees. He submits that the statutory compliances as prescribed under the Negotiable Instruments Act are in place and have been established on the basis of the material on record.

8. Mr. Pereira, submits that the respondent nos. 1 and 2 have not at all been consistent with their defence. He submits that on one hand it was stated that the Account with the Bank was directed to be closed because the appellant was holding on certain cheques and there was a possibility of misusing the cheques and at the same breath, the respondent nos. 1 and 2 have stated that they had issued no instructions to the Bank to close the Account, but, it is the Bank which closed the Account on its own, since the Account was not operational.

9. Mr. Pereira, submits that there is material on record which establishes that during the period of one year, preceding the raising up of bill dated 04.05.2009, the appellant had submitted some title reports and had discharged other professional duties towards respondent nos. 1 and 2.

10. Mr. Pereira, submits that there was absolutely no suppression on the part of the appellant and whatever material was necessary for establishing the case under the N.I. Act, was produced on record. The MOU, with which, the appellant confronted the witness's of respondent nos. 1 and 2, also establishes the relationship between the appellant and the respondent nos. 1 and 2 and further, establishes that the amount referred to in the cheque, which has been

dishonoured, was towards the discharge of debt and other liabilities.

11. Mr. Pereira, points out that respondent nos. 1 and 2, claim that they had no nexus, whatsoever, with the appellant. He submits that it was only after the material in the form of MOU, which was produced on record, that the respondent nos. 1 and 2 were forced to acknowledge the relationship between the appellant and the respondent nos. 1 and 2.

12. Mr. Pereira, submits that all these aspects, have not been considered by the Appeal Court and there are compelling reasons, which warrant interference with the impugned judgment and order.

13. On the other hand, Mr. Coutinho, submits that the view taken by the Appeal Court is a correct one. In any case, he submits that the view taken is a plausible view. Adverting to the limitations that this Court has to keep in mind, while deciding an Appeal against acquittal, Mr. Coutinho, submits that if two views are possible, this Court, ought not to interfere. He submits that if, the view taken is a reasonable and a plausible view then this Court, ought not to interfere.

14. Mr. Coutinho, submits from the material on record that it appears that the appellant has claims towards professional fees and other charges to the extent of Rs.4 crores or thereabouts. He submits that it is only in respect of this cheque the appellant has furnished a bill dated 04.05.2009. He submits that this is inconceivable and in any case improbable.

15. Mr. Coutinho, submits that there is absolutely no material on record to show that the appellant has done any work or has discharged any particular assignment during the period from 04.05.2008 to 04.05.2009, since the bill is alleged to be in respect of the work done during the period of the year, preceding the date. He submits that the appellant in her deposition stated that her claims arose out of the MOU and in terms of the MOU, she was required to be paid in respect of the completed transactions. Mr. Coutinho, submits that there were no completed transactions during the period of one year, preceding the bill dated 04.05.2009 and this cheque cannot be said to have been issued against any debt or liability.

16. Mr. Coutinho, points out that the cheque is from the folio of the year 2007. He states that the cheques preceding and following the said cheque were issued and honoured in the year 2007 itself. He submits that such circumstances render extremely plausible defence raised that blank cheques were kept with the appellant for payments to brokers or purchasers and that the cheque in question has been misused by the appellant. For all these reasons Mr. Coutinho, submits that the appeal may be dismissed.

17. The rival contentions now fall for my determination.

18. In *Sidhartha Vashisht Vs. State*, (2010) 6 SCC 1, the Hon''ble Supreme Court has held that an order of acquittal is to be interfered with only if there are "substantial reasons and compelling circumstances" for doing so. When the Trial

Court has ignored the evidence or misread the material evidence or has ignored the material documents, the Appeal Court is competent to reverse the decision of the Trial Court depending upon the materials produced.

19. In Chandrappa & Others Vs. State of Karnataka, (2007) 4 SCC 415, the Hon"ble Supreme Court has held that where two views are possible on evidence on record, one taken by the Trial Court in favour of the accused is ordinarily not to be disturbed by the Appeal Court. Same are the observations in the case of K. Prakashan Vs. P.K. Surenderan, (2008) 1 SCC 258. Therefore, the rival contentions will have to be examined keeping in mind this jurisdictional parameter associated with an Appeal against acquittal.

20. It is the precise case of the appellant that the cheque dated 20.09.2009 was issued in pursuance of the bill dated 04.05.2009 raised by the appellant upon the respondent nos. 1 and 2 in an amount of Rs.1 lakh. The bill has been produced on record and the material portion of the same reads thus:

BILL

Sirs,

Hereunder find my Bill for legal services render to you:

Obtaining title documents, translation, carrying out searches in the office of Town & Country Planning Dept., Municipality, Panchayats, P.W.D., C.R.Z., Management Authority for last one year Amount in Rs. 100000/- (Rs. One Lakh only)

Vasco-Da-Gama.

04/05/09

Yours faithfully,

sd/-

Adv. Anu Tripathi

21. There is really no clear material on record to establish that the appellant had infact undertaken all or any of the works referred to in the bill for the period between 04.05.2008 and 04.05.2009. Mr. Pereira, however, submits that in the suit instituted by the appellant against respondent nos. 1 and 2, there is a reference to some title searches or some title reports during the said period. Such reference by itself hardly constitutes legal evidence, sufficient to sustain any conviction for a criminal offence. Besides, there are several other circumstances, which have been considered by the Appeal Court for acquitting the respondent nos. 1 and 2.

22. The Appeal Court rightly noted that this was the only bill raised by the appellant upon the respondent nos. 1 and 2, even though, it is alleged by the appellant that respondent nos. 1 and 2 are liable to pay almost Rs.4 crores

towards various professional assignments undertaken by the appellant. The appellant, in her deposition has made reference to MOU, in terms of which, she was given some 15% stake in all the transactions in which respondent nos. 1 and 2 were parties to. The appellant has deposed that her claims including legal fees are payable to her in terms of MOU (Exhibit-48). The appellant has also admitted that she is holding sum of Rs.26,25,000/- paid to her by respondent nos. 1 and 2. The appellant has also admitted that she was a Director of certain Companies of respondent nos. 1 and 2, which according to her were fully owned Companies. She admitted that various signed cheques were kept in her possession and that they were kept for making payments of the vendors of the properties.

23. If, the appellant admits that various signed cheques were kept in her possession, it cannot be said that the defence raised by respondent nos. 1 and 2 that this was also one such cheque, that was kept with the appellant in the year 2007 itself for making payments to vendors, is an implausible defence. It is the case of the respondent nos. 1 and 2 that it is the appellant who has filled in the details upon such cheque and attempted to pass of the cheque as one issued towards the discharge of debt or liability, when in fact, there arose no debt or liability.

24. There is a civil suit pending between the parties and at this stage, obviously, it is neither necessary nor advisable to make any final observations. However, the material on record is sufficient to raise a reasonable doubt or to accept the defence raised by respondent nos. 1 and 2. In such circumstances, it cannot be said that the view taken by the Appeal Court is either unreasonable or perverse or a view which was incapable of being taken, on the basis of the material on record. This is sufficient for not interfering with the acquittal.

25. The appellant in her deposition again, with reference to the MOU has stated that she was entitled to be paid in respect of the "completed transactions". She has categorically admitted that she was not entitled to any fees on transactions, which had failed or were not complete. She has in turn admitted that there were no completed transaction between 04.05.2008 to 04.05.2009. Thereafter, in her deposition she has admitted that the bill at Exhibit-7 was not towards any completed transaction and only in respect of complete transactions, she was required to be paid. All this was sufficient to cast a doubt as to whether, the cheque in question was at all issued towards discharge of any debt or liability.

26. The Bank Officer was examined as DW-3, who has deposed that the cheque in question is from the cheque book/folio of the year 2007. He has deposed that the cheques preceding and following the cheque dated 20.09.2009 were issued and honoured in the year 2007 itself. It is a categorical case of the appellant that the cheque in question was issued to her about four months after she raised the bill dated 04.05.2009 i.e. in September, 2009. If, the cheques, preceding and following the cheque dated 20.09.2009, were issued and honoured in the year 2007 itself, it is a little difficult to accept that this particular cheque dated 20.09.2009 from the cheque book of the year 2007 was available with

respondent nos. 1 and 2 in the year 2009 to issue. Again, this is the circumstance, which casts a reasonable doubt on the entire transaction.

27. Despite there being legal presumptions which go with the issue of a Negotiable Instrument, such presumption, are rebuttable. The burden of proof upon an accused is much lesser than the burden which a complainant is required to discharge. In this case, the learned Appeal Court upon assessing the material on record and for the reasons which are recorded, chose to acquit respondent nos. 1 and 2. As noted earlier, it cannot be said that the view taken by the learned Appeal Court is an unreasonable view or a perverse view. This is not the case where vital evidence is over looked or there is some gross misreading of evidence on record. Again, adverting to the limited scope available to interfere with an acquittal, no case is made out to warrant interference.

28. Therefore, upon cumulative consideration of the materials on record and being conscious of the limitation upon interference in an appeal against acquittal, there is no case made out to interfere with the acquittal. This appeal is accordingly, dismissed.