
(2011) 12 JH CK 0067

In the Jharkhand High Court

Case No : Acquittal Appeal No. 28 of 2008

M/s. Goyal Enterprises

APPELLANT

Vs

The State of Jharkhand and Ishta Narayan Mihsra

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 118, 138, 139, 141(2), 87

Citation : (2012) 2 BC 629 : (2012) 1 JLJR 166

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.C. Mishra

1. Heard learned counsels for both the sides.

2. This appeal is directed against the Judgment of acquittal passed by Shri Asif Equbal, Judicial Magistrate, 1st Class Jamshedpur, in Complaint Case No. C/1 181of 2001, T.R. No.976 of 2007, whereby, in the complaint case filed by the appellant complainant for the offence u/s 138 of the Negotiable Instrument Act, (hereinafter referred to as "the N.I. Act"), the Court below upon adjudication has acquitted the respondent accused, finding him not guilty for the offence charged.

3.The case of the appellant complainant, as made out in the complaint petition filed by the complainant M/s Goyal Enterprises, is that the complainant is engaged in business of steel materials and it supplied steel materials on credit to M/s Everest Electrical and Engineering Company Pvt. Ltd, pursuant whereeto, the accused Ishta Narayan Mishra, being the Managing Director of the said company had issued two account payee cheques in favour of the complainant, bearing cheque No. 0956555 for Rs.51,044/- and cheque No.0956556 for Rs.1,10,115/-, both of which were issued on 14.9.2000, drawn upon State Bank of India, S.S.I Adityapur Branch, Jamshedpur. The cheques were deposited in the Bank, but were dishonoured and returned with the Bank Return Memo giving reason

"Exceed Arrangements" on 13.1.2001. Subsequently, the complainant served a legal notice of demand on 19.1.2001 to the accused, demanding the amount of the cheques, but when the amount was not paid, the complaint case was filed by the complainant u/s 138 to the Act.

4. In the Court below, the authorized attorney of the complainant, namely, Hardeep Singh was examined as CW-1, wherein he has deposed about the complaint case. He has proved his authority letter which was marked as Exhibit 1. He has also proved the cheques which were marked as Exhibits 2 and 2/1. He has proved the Return Memo of the Bank which has been marked as Exhibit 3. This witness has also proved the legal notice of demand, which was marked as Exhibit 5. Postal receipts of sending the notice of demand were marked as Exhibits 6 and 6/1. The Acknowledgment due has also been proved, which has been marked as Exhibit 7. In his cross examination about the cheques, he has denied the suggestion that there were any interpolation in the dates on the cheques.

5. From perusal of the record, it appears that though no oral evidence has been adduced by the defence, but some documentary evidences have been adduced and they were marked as exhibits.

6. At this stage, it may be stated that from bare perusal of the cheques which have been proved in this case as Exhibits 2 and 2/1, it appears that there are interpolations in the date of the cheques. The cheques are dated 14.9.2001 and bare perusal of cheques shows that there are overwritings on the figure "4" and the month "4" have been overwritten and made "9" in both the cheques. There is no signature or endorsement of the drawer of the cheques on the overwriting on either of these cheques.

7. Learned counsel for the appellant complainant submitted that all the statutory requirements were completed before filing the complaint case, in as much as, the cheques were deposited in the Bank within the due date and upon getting the information about the dishonour of the cheques, the notice was given to the respondent accused within the prescribed period and when no payment was made by the accused respondent, the complaint was filed within the period prescribed by the N.I. Act.

8. Learned counsel has, accordingly, submitted that there is presumption against the accused under Sections 118 and 139 of the N.I. Act, but the accused has failed to rebut the said presumption. In this connection, learned counsel placed reliance upon a decision of this Court in the case of M/s. Bharat Sales Corporation Vs. State of Jharkhand & another, reported in 2004 (4) JLR 317, wherein it has been held that legal presumptions under sections 138 and 139 prevail in absence of any evidence to the contrary and in view of the fact that no reason was assigned by the Court below for discarding the oral and documentary evidence adduced by the complainant in the said case, this Court set-aside the order and remitted back the matter to the Court below for reconsideration of the

materials and evidence on record. Learned counsel also placed reliance upon the decision of the Hon''ble Supreme Court of India in the case of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & anr., reported in [2005 (4) East Cr C 98 (SC)], wherein it has been held that where the cheque has bounced, the signatory of the bounced cheque is clearly responsible for the incriminating act and he must bear the liability u/s 141(2) of the N.I. Act. Learned counsel also placed reliance upon the decision of the Hon''ble Supreme Court of India in the case of Veera Exports Vs. T. Kalavathy, reported in (2002) 1 SSC 97, wherein it has been held that there is no bar against voluntary revalidation of a negotiable instrument (including a cheque) by the drawer after the expiry of its validity period. Placing reliance upon this decision, learned counsel submitted that even though there were overwritings on the dates of the cheques, it shall only amount to revalidating the cheques.

9. In the case of Veera Exports (supra) the change of the date on the cheque was under endorsement of the drawer of the cheque, but in the present case there is no endorsement or signature of the drawer of the cheques under the overwritings on the dates. This apart, it is not at all the case of the complainant that after the expiry of the cheques, the same were revalidated by, or with the consent of the drawer. Rather, the specific case of the complainant is that the cheques were issued on 14.9.2000 itself. As such, this decision is not at all applicable to the facts of this case.

10. Learned counsel for the respondent accused on the other hand has argued that there are interpolations in the cheques and accordingly the cheques had become void in view of Section 87 of the N.I. Act, which says that any material alteration of negotiable instrument renders the same void. Learned counsel accordingly submitted that the respondent accused could not have been tried for the offence by the Court below in view of the fact that the cheques were void and the Court below has rightly acquitted the respondent accused, though on other valid grounds. As such, there is no illegality in the Judgment of acquittal passed by the Court below.

11. After hearing learned counsels for both the sides and upon going through the materials on record, I find that the cheques which have been proved in this case clearly show that there are material alterations in the same in as much as, the date "14.4.2000" in both the cheques have been altered as "14.9.2000" and there is no endorsement or signature thereon of the drawer of the cheques. Section 87 of the N.I. Act reads as under:

87. Effect of material alteration. -- Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

12. Section 87 of the N.I. Act is a mandatory provision and in this view of the

matter, the cheques which were materially altered before production in the Court and without any evidence to the effect that how the said alterations in the cheques were made, were absolutely void and the accused could not have been found guilty of the offence u/s 138 of the N.I. Act on the basis of the said void cheques. In view of this finding, the other arguments made by the learned counsel for the appellant now remain only of academic importance, which need no further discussion in the present case.

13. In view of the aforementioned discussions, I find and hold that the respondent accused could not have been found guilty of the offence u/s 138 of the N.I. Act on the basis of the said void cheques which have been produced in the Court below and marked Exhibits 2 and 2/1, there being material alteration in the dates of the cheques.

14. Accordingly, I do not find any material worth interference with the acquittal of the respondent accused. There is no merit in this appeal, which, accordingly, fails and the same is, hereby, dismissed.