

(2018) 01 BOM CK 0074
In the Bombay High Court
Case No : 234 of 2010

M/s. Santaji Krishi Sewa Kendra

APPELLANT

Vs

Shankar Sonaji Rathod & Anr.

RESPONDENT

Date of Decision : 18-01-2018

Acts Referred:

[Negotiable Instruments Act, 1881](#), [Section 138](#), [Section 139](#) - Dishonour of cheque for insufficiency, etc., of funds in the account - Presumption in favour of holder

Citation : (2018) 01 BOM CK 0074

Hon'ble Judges : Rohit B. Deo

Bench : Division Bench

Advocate : J.D. Bastian, M.P. Karia, V.P. Gangane

Judgement

1. Challenge is to the judgment and order dated 30.11.2009, in Summary Criminal Case 680 of 2003, delivered by Judicial Magistrate First Class, Arvi, by and under which, the respondent 1 / accused is acquitted of offence punishable under section 138 of the Negotiable Instruments Act, 1881 ("Act" for short).
2. Heard Shri Bastian the learned counsel for the appellant and Shri M.P. Kariya, the learned counsel for respondent 1 and Shri. V. P. Gangane, the learned Additional Public Prosecutor for respondent 2.
3. The submission of the learned counsel Shri. Bastian is that the accused failed to rebut the statutory presumption under

section 139 of the Act. The submission is that the learned Magistrate committed serious error of law in holding that the failure of the complainant to produce the accounts evidencing the transaction is sufficient to rebut the statutory presumption.

4. Per contra, the learned counsel for the accused submits that the accused has adduced defence witness. However, it is well settled position of law, that in order to rebut the presumption, it is not obligatory for the accused to step into the witness box or to adduce direct evidence. The statutory presumption can be rebutted by demonstrating that the existence of legally enforceable debt or liability is highly improbable. This can be demonstrated from material produced by the complainant or material extracted during the cross examination of the complainant or the witnesses examined on behalf of the complainant.

5. According to the complaint, cheque dated 27.2.2003 was issued to the complainant towards discharge of existing liability to wit the payment of goods (fertilizers) purchased from the shop of the complainant on credit, from time to time till 2003. The signature on the cheque is not disputed. However, the defence of the accused is that post 1997 he did not have any business transaction with the complainant. He had given a cheque as security in the year 1996, the cheque was blank in contents although signed by the accused. It is in the context of the defence that he did not have any business relations with the complainant after 1997 and that even the account against which the cheque was issued was closed in the year 1998, that the failure of the complainant to produce documentary proof to substantiate that he sold goods on credit to the accused till 2003, needs to be appreciated.

6. Be it noted, that the accused has proved by examining D W 1 Mohan Dekate that the disputed cheque 977842 was one of the fifty (977801 to 977850) cheques in the cheque book which was issued to the accused in the year 1996. D W 1 has deposed that except the disputed cheque every other cheque is duly encashed. This evidence, and nothing is brought on record to disbelieve the evidence, renders the existence of liability highly improbable. The fact that the disputed cheque is a part of the cheque book issued in the year 1996 and every other cheque is duly encashed before the closure of the account in 1998 renders the version of the complainant that the cheque was issued on 27.2.2003 extremely doubtful. Indeed, the presumption is duly rebutted by the accused by bringing on record evidence to which reference is made supra. In view of the rebuttal of the statutory presumption under section 139 of the Act, the burden shifted on the complainant to prove the existence of legally enforceable debt or liability. I am afraid, the complainant has miserably failed to discharge the burden which has shifted in view of the rebuttal of the statutory presumption under section 139 of the Act.

7. The learned Magistrate has noted that the complainant admitted in the cross examination that there did exist an agreement between him and the accused about the outstanding amount. The agreement, which according to the complainant was a written agreement, is not produced on record. Nothing is produced on record to prove that there was any business relationship between the complainant and the accused after 1997. In the teeth of the evidence on record, the finding of the learned Magistrate that the statutory presumption is duly rebutted and the complainant thereafter did not prove the existence of legally enforceable debt or liability, is unexceptionable.

8. At any rate, the view taken by the learned Magistrate is neither perverse nor is the view vitiated by any apparent error of law and no compelling case is made out for interfering in the judgment and order of acquittal.

The appeal is sans substance, and is rejected.