
(2009) 05 JH CK 0020
In the Jharkhand High Court
Case No : Criminal Revision No. 888 of 2006

Prabhu Dayal

APPELLANT

Vs

State of Jharkhand and Hari Lal

RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 139
Penal Code, 1860 (IPC) — Section 420

Citation : (2009) 2 ALD(Cri) 26 : (2010) CriLJ 1209 : (2010) 5 RCR(Criminal) 646

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : Anil Kumar, for the Appellant; Neelanjan Chatterjee and A.K. Sahama Advs. for the Opp. Party No. 2 and Anita Sinha, APP, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kumar, J.—The revision is directed against the judgment and order of sentence dated 9.6.2005 passed by Judicial Magistrate, 1st Class, Hazaribagh in Complaint Case No. 27 of 1994, corresponding to T.R. No. 681 of 2005, by which judgment the learned Magistrate found the petitioner guilty u/s of the N.I. Act and Section 420 of the Indian Penal Code. The learned Magistrate sentenced the appellant for 1 year S.I. u/s 420 of the Indian Penal Code and 1 year S.I. u/s 138 of the N.I. Act. He also directed the petitioner to pay Rs. 2 lakhs to the complainant which is the cheque amount. In appeal the learned Additional Sessions Judge, Madan Mohan Singh, Fast Track Court No. VII, Hazaribagh, by which judgment dated 22.8.2006 in Cr. Appeal No. 103/05 found the appellant only u/s 138 of the N.I. Act, and dismissed the appeal. Hence this revision.

2. The only point of law raised by the petitioner in this revision application is that since the cheque submitted by the complainant was returned back on the ground that the drawee has instructed to stop payment, since the cheque has been lost and Section 138 of the Negotiable Instrument Act says that only when the

cheque is returned stating that the money standing to the credit of the account of the drawer is insufficient to honour the cheque or it exceeds the amount arranged to be paid from that account by an agreement made with that Bank, and as such only these two conditions of Section 138 of the N.I. Act is attracted. He has further argued that the admitted case of the complainant is that the cheque was given as a security and not in discharge or any debt or other liability and in that case also Section 138 of the N.I. Act is not attracted.

3. On the other hand, learned Counsel for the opposite party No. 2 has submitted that if a cheque has returned by the Bank stating that the drawer issued notice to the Bank for stoppage of payment on any ground then Section 138 of the N.I. Act will be attracted. He relied on a Supreme Court decision for the aforesaid argument.

4. Heard both the parties and going through the record, I find that as per the prosecution case the accused-petitioner approached the complainant-opposite party No. 2, Harilal in the 1st week of June 1992, for supply of chimney bricks and stone chips as the opposite party No. 2 was dealing with the business of chimney bricks and stone chips and the petitioner issued two account payee cheques in the name of opposite party No. 2, bearing Cheques No. A/350/950788 dated 28.6.93 for amount of Rs. 80,000/- and another Cheque No. A/350/950787 dated 30.6.93 for amount of Rs. 85,000/-. Both the cheques were payable at S.B.I., Bazar Branch, Hazaribagh. It is further stated that the petitioner-accused requested the complainant-opposite party No. 2, not to present the cheques immediately in the Bank and promised to pay the amount of cheque in cash within two or three months and as such the complainant waited for two or three months. It is further submitted that when the compromise period expired then again the complainant-opposite party No. 2 approached to the petitioner-accused for payment of the money, but when payment was not made and seeing the statutory period of presentation of cheques in the Bank is expired. He presented both the cheques to the S.B.I., Bazar Branch, Hazaribagh, but the Bazar Branch returned the cheques giving reasons, as the cheques were reported to be lost by the drawer. After receiving the information the opposite party No. 2-complainant served notice upon the complainant through registered post as required u/s 138 of the N.I. Act and demanding therein to make payment of the cheque amount within 15 days from the date of receipt of notice, but the payment was not made to the complainant and the complainant-opposite party No. 2 filed a case under Sections 138 of the N.I. Act and 420 of the Indian Penal Code and the learned Magistrate after trial convicted the appellants. Both, the appellate court and trial court have concurrently found on the fact that the cheques were given in the petitioner-accused as price for supply of chimney bricks and stone chips. After supply of the goods the complainant waited for two or three months, as promised by the complainant and when in spite of repeated reminder the payments were not made and the cheques presentation by him was expiry, hence the argument of the learned Counsel for the petitioner that the cheques were not given for payment in discharge on any debt or other liability is

not correct. The cheques were given against supply of goods and on refusal of payment by the banker of the petitioner-accused it clearly makes out a case u/s 138 of the N.I. Act. The second argument of the learned Counsel for the petitioner that since u/s 138 of the N.I. Act the offence will be committed only when the bankers returned the cheques unpaid either because of the amount of money standing to the credit of that account of the drawer is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that Bank is concerned. The said matter it appears was raised before Hon"ble Supreme Court in the case of Goaplast Pvt. Ltd. v. Chico Ursula D'Souza and Anr. reported in 2003 (2) E Cri. C. 108 (S.C.) In this case the Hon"ble Supreme Court has held in para 5 that once a cheque issued by a drawer, a presumption u/s 139 must follow and merely because the drawer issued notice to the drawee or the Bank for stoppage of payment it will not preclude an action u/s 138 of the N.I. Act by the drawee or the holder of the cheque in due course. The Hon"ble Supreme Court finally in para 7 to a conclusive finding as under:

Hence when the cheque is returned by a Bank with an endorsement "account closed", or "payment stopped", it would amount to returning the cheque unpaid because "the amount of money standing to the credit of that account is insufficient to honour the cheque" as envisaged in Section 138 of the N.I. Act.

5. In that view of the matter, the argument of the learned Counsel for the petitioner that the cheques were dishonours because it was directed by the drawer not to make payment.

6. Since, the cheques are lost also amounts to returning the cheque unpaid, "because" the amount of money standing to the credit of that account is insufficient to honour the cheque, which is fully covered u/s 138 of the N.I. Act.

7. I find no merit in the revision application and accordingly the same is dismissed.