
(2012) 01 JH CK 0058
In the Jharkhand High Court
Case No : Acquittal Appeal No. 21 of 2007

Prahalad Rai Agrawal

APPELLANT

Vs

The State of Jharkhand and Arvind Kumar Sinha

RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 118, 138, 139
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2012) 01 JH CK 0058

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.C. Mishra, J.—Heard learned counsels for both the sides and perused the record. This acquittal appeal arises out of the Judgment of acquittal dated 9th April 2007 passed by Shri Brajesh Kumar Gautam, Additional Sessions Judge, Fast Track Court II, Ghatsila, East Singhbhum, in Criminal Appeal no. 285 of 2006, whereby the Judgment of conviction and Order of sentence dated 13 9 2005 passed by Slid S.C. Jaiswal. Sub Divisional Judicial Magistrate. Ghatsila, in C-I Case no. 55 of 2001/ T.R. No. 330 of 2006 has been set aside by the learned Appellate Counsel below and the respondent accused has been acquitted of the charge u/s 138 of the Negotiable Instruments Act thereafter referred as the "N.I. Act"), for which he had been convicted and sentenced by the Trial Court below.

2. The complainant, Prahalad Rai Agrawal, had filed the complaint bearing C-1 Case no. 75 of 2001 in the Court of Additional Chief Judicial Magistrate, Ghalsila, against the act used Arvind Kumar Sinha for the offence under Sections 420 and 406 of the Indian Penal Code and Section 138 of the N.I. Act. According to the complainant's case, the accused and his wife Smt. Shobba Singh were in business terms with the complainant and a sum of rupees three lakhs was due from the accused as well as from his wife over a business transaction and they

were required to pay the same to the complainant, as per an agreement entered into between them on 30.8.2000. Ultimately, at the instance of the complainant, the accused and his wife had issued four post dated cheques in favour of the complainant and his son Sandeep Agrawal, each for Rs. 75,000/- drawn on Bank of India, Sakchi Branch, Jamshedpur. However, all those cheques are not in the subject matter of this case, rather, only one cheque for Rs. 75,000/- bearing no. 114834 dated 24.4.2001 issued in favour of the complainant is the subject matter of this case. It is alleged that the said cheque, was presented in the Bank by the complainant, but the complainant received information from the Bank on 9.6.2001 that the cheque was dishonored due to the fact that the accused, did not have sufficient fund in his Bank, account. Thereafter, a legal notice of demand was given to the accused on 20.6.2001 but the same was returned as "not claimed" by the accused and accordingly, the complaint petition was filed in the Court below.

3. In course of trial, evidence was adduced by both the sides and upon adjudication of the case, the trial Court found the accused guilty for the offence under Section 138 of the N.I. Act and accordingly, convicted him and upon sentencing, on the point of sentence, sentenced him to undergo simple imprisonment for six months and to make payment of fine of Rs.3,000/-, in default whereof, to undergo further simple imprisonment for a period of two months.

4. The said Judgment of conviction and Order of sentence were challenged by the respondent accused in Criminal Appeal, which was allowed by the learned Appellate Court below by the impugned Judgment dated 9.4.2007. From perusal of the Judgment passed by the learned Appellate Court below, it appears that appeal has been allowed on the basis of an agreement dated 30.3.2000, which was the basis of liability of the accused and which had been proved by the complainant as Ext. I. The complainant and his son were the 1st party, whereas the accused and his wife were the 2nd Party in the said agreement, which was an agreement for sale of the complainant's company, namely, M./s Goyal Wires Private Limited, to the accused on the terms and conditions detailed in the agreement. The agreement clearly showed that the consideration money was agreed at Rs. 4,01,000/-, out of which, Rs. 1,01,000, was already paid to the complainant at the time of agreement and payment of balance amount of Rs. 3,00,000/- was to be made and it was agreed between the parties, that the purchaser would be wholly responsible for liquidating all the liabilities of the company detailed in the agreement and a sale deed would be executed with respect to the transfer of land measuring 9800 sq. ft. immediately after the liabilities of the company were liquidated by the second party i.e. the purchaser. It was further agreed upon by the parties that the 1st party (complainant) shall make valid transfer of the total share holding, and total share application money to the second party (respondent accused) in proportion of making payment of consideration money of Rs. 4,01,000/-. On the basis of the evidence on record the learned Appellate Court below has found that the accused had made the payment of Rs. 3,40,000/- to the complainant, but not a single share was

transferred by the complainant in favour of the accused and even though specific questions were put to the complainant and his son in cross-examination about the transfer of shares, they only give evasive replies to the same. The Appellate Court below, accordingly, came to the conclusion that there existed no legally enforceable debt or liability upon the so used and it could not be presumed, in the facts of the case, that the cheque in question was issued in discharge of whole or part of any liability.

5. From the perusal of the record it appears that complainant's son, who was examined by the complainant as C.W. 1 has admitted in his cross-examination that at the time of agreement, all the amount except Rs. 8,00,000/- had already been received and thereafter an amount of Rs. 1,50,000/- had also been received, on the basis of the agreement and now only the amount of Rs. 1,50,000/- as per the agreement is due. Similarly, the complainant, who has himself examined as C.W.2, has also admitted in his cross-examination that out of Rs. 8,00,000/- which was payable to him, he had received Rs. 1,30,000/-, he has also admitted that the accused had also liquidated all the liabilities of the company and the amount was also registered in favour of the accused, for which Rs. 89,000/- was paid to the complainant. However, when both these witnesses were asked about the transfer of share holdings and share application money in favour of the accused, they have given only evasive replies. On the other hand the defence witness has specifically stated that no share holdings and share application money were transferred in favour of the accused by the complainant. The defence witness has also proved the documents, which have been marked exhibits to show that not a single share was transferred in favour of the accused, even though the money was received by the complainant. Ext. B/3 is a Search Report proved by the defence, which shows that no share was transferred by the complainant till 27.06.2006."

6. Learned counsel for the appellant-complainant has submitted that the learned Appellate Court, below has committed a grave error of law and had jumped into conclusion only on the basis of Ext-1, but had not taken into consideration Ext.8, which was proved by the son of the complainant. C.W. 1 Sandeep Agrawal, which clearly shows that the accused has admitted his liability of Rs. 8,00,000/- to be paid to the complainant. Learned counsel for the complainant has further submitted that, the complainant has been able to prove that the cheque in question, which has been proved as Ext.8, was deposited in the Bank within due date and when the same was dishonoured, the notice of demand was also given to the accused within time, which has also been proved as Ext.-L "the cheque return memo and the letter issued by the Bank in intimating the complainant-appellant about the dishonour of the cheque, have also been proved by the complainant and in view of the fact that notice of demand was not claimed by the complainant, it has to be deemed that there was duly stayed upon the accused, "thereafter the complaint was filed within time. Learned counsel has, accordingly, submitted that there is a presumption against the accused under Sections 118 and 139 of the N.I. Act, where the accused has not been able to

rebut and accordingly, the impugned Judgment passed by the learned Appellate Court below cannot be sustained in the eyes of law. Learned counsel has accordingly, submitted that it is- a lit case in which the Judgment passed by the learned Appellate Court, below be set aside and Judgment of conviction and Order of sentence passed by the learned trial Court be upheld.

7. Learned counsel for the respondent accused, on the other hand, has submitted that in the present case, the complainant has been able to rebut the presumption against, him, inasmuch as, from the evidence brought, by the complainant himself as Ext 4, it is apparent that the share holding and the share application money were required to be transferred in favour of the accused in proportion of - payment made out of the consideration amount of Rs 4.01,000/-, it is an admitted position that Rs. 1.01,000/- was paid at the time of agreement itself and it is also admitted by the complainant that all the liabilities of the company had been liquidated by the accused and thereafter the I master of kind was also made in favour of The accused for which Rs. 89,000/- was also paid to the complainant. It also finds admitted that out of balance of Rs. 3,00,000/-, Rs. 1,50,000/- had been paid subsequently to the complainant and as such, in all, payment of Rs. 3,40,000/- had already been made to the complainant, but not a single share was transferred in favour of the accused the complainant and his son did not admit this fact and they gave only evasive replies in their cross-examination about the transfer of share, but the defence has brought on record the document, which has been proved as KM. B/3, to show that not a single share was transferred in favour of the accused until 27.6.2006. Learned counsel has accordingly, submitted that the accused had been able to rebut the presumption, but the complainant failed to prove his case beyond all reasonable doubts and in that view of the matter, the respondent-accused has been rightly acquitted by the learned Appellate Court below setting aside the Judgment of conviction and Order of sentence passed by the Trial Court below. Learned counsel has, accordingly, submitted that there is no illegality in the impugned Judgment passed by the learned Appellate Court below and the same cannot be interfered with.

8. After having heard learned counsels for both the sides and upon going through the record, I find that in view of the fact that the accused had been able to prove that not a single share was transferred in favour of the accused by the complainant, even though the complainant had admittedly received a sum of Rs. 3,40,000/-, the accused had been able to rebut the presumption under Sections 118 and 139 of the N.I. Act and it was for the complainant to prove that he had transferred the adequate amount of shares and share application money in favour of the accused, but the complainant and his son had given only evasive replies to the questions put to them in this regard during cross-examination, from perusal of the evidence of C.W.1 - it is apparent that Ext.-8, on which much stress has been given by the learned counsel for the appellant, was prepared in the office of the complainant himself, and accordingly much reliance cannot be placed on the same, particularly, in view of the fact that the respondent accused

had been able to prove that, he had made the payment of Rs. 3,40,000/- to the complainant, but not a single share was transferred in his favour as per the agreement proved by The complainant himself as Ext.1. As such, the learned Appellate Court below has rightly come to the conclusion that there existed no legally enforceable debt or liability against the accused and has acquitted the accused of the offence u/s 138 of the N.I Act.

9. It is the settled principle of law that the presumption u/s 139 of the N.I. Act is a rebuttable presumption and if the accused is able to rebut the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the complainant who will be obliged to prove it as a matter of fact and his failure to prove shall disentitle him to the grant of any relief under the N.I. Act. The law in this connection is well settled by the decision of the Hon'ble Supreme Court of India in the case of *Bharat Barrel & Drum Manufacturing Company Vrs. Amin Chand Pyarelal*, reported in (1993) 3 SCC 35, which reads as follows:

12. Upon consideration of various Judgments as noted hereinabove, the position of law which emerges is that, once execution of the promissory note is admitted, the presumption u/s 118 (a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence, if the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including, of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising u/s 118 (a) in his favour. The Court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of "shifting the onus of proving to the plaintiff. To disprove the presumption the defendant has to bring on record such facts and circumstances upon consideration of which the Court may either believe that the consideration did not exist or its nonexistence was so probable that a prudent man would, under the circumstances of the case act upon the plea that it did not exist.

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(emphasis supplied)

The aforementioned decision has been approvingly cited by the Hon"ble Supreme Court of "India in Rangappa v. Sri Mohan 2010 (3) JCR 16 (SC). The law laid down as above, is fully applicable to the bids of this case

10. In The aforementioned, lads and circumstances, I find and hold that the complainant had failed to prove its case beyond all reasonable doubts, whereas the accused had been able to prove that there remained no legally enforceable debt or liability against the accused due to non transfer of shares by the complainant lo the accused in proportion to the consideration received by him from the accused, beamed Appellate Court below has, accordingly, rightly acquitted the accused of the offence u/s 138 of the N.I. Act and there is no illegality in the judgment of acquittal passed by the learned Appellate Court below. Consequently. I do not find any merit in this appeal, which is, accordingly, dismissed.