
(2009) 09 JH CK 0056
In the Jharkhand High Court

Prakash Srivastava @ Prakash Kumar Srivastava	APPELLANT
Vs	
State of Jharkhand and Another	RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 2 BC 460 : (2010) 3 CivCC 759 : (2010) 3 RCR(Civil) 416 : (2010) 5 RCR(Criminal) 254

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pradeep Kumar, J.—Heard learned Counsel for the petitioner and learned Counsel for the State. Nobody appears on behalf of the opposite parties.

2. This revision is directed against the judgment of conviction and order of sentence dated 3.1.2009 passed by Mr. Surya Bhushan Ojha, Judicial Magistrate, 1st Class and Jamshedpur in Clause 428 of 2006 (T.R. No. 278 of 2009). by which judgment the learned Magistrate found the petitioner guilty u/s 138 of the Negotiable Instruments Act, 1881 and sentenced him to undergo simple imprisonment for one year and pay a compensation to the complainant a sum of Rs. 10 lakh within one month. The said judgment was confirmed by the District and Sessions Judge, East Singhbhum, Jamshedpur by the order dated 30.3.2009 in Cr. Appeal No. 23 of 2009. after considering the evidences of both the parties on record, found the appellant guilty u/s 138 of the Negotiable Instrument Act, 1881 and confirmed the same.

3. It is submitted by learned Counsel for the petitioner that both the Courts wrongly found the petitioner guilty u/s 138 of the Negotiable Instruments Act, since, as per the provision of Section 138 of the Negotiable Instruments Act, liabilities created or occurred in past or in future are covered. It is submitted by learned Counsel for the petitioner that in the instant case liability was to occur in future and the cheques were given as a security for future debt, and as such.

Section 138 of the Negotiable Instruments Act was not applicable.

4. Learned Counsel for the petitioner has relied upon the judgment reported in *Laxminivas Agarwal Vs. Andhra Semi Conductors Pvt. Ltd. and Others*, in the case of *Laxminivas Agarwal*. It is submitted by learned Counsel for the petitioner that although this point of law was not argued in the Trial Court, but, since point of law can be raised at any stage, hence the finding is bad in law and fit to be set aside. He has also relied in the decision reported in *Sathavahana Ispat Limited Vs. Umesh Sharma*, in the case of *M/s. Sathavahana I spat Ltd.* for the same.

5. On the other hand, learned Counsel for the State has opposed the prayer and submitted that there is no such defence taken by the petitioner in the Trial Court, the petitioner had taken the defence that the notices were not duly served upon the accused and hence he could not make the payment within fifteen days. The petitioner-accused had refused to take the notice, which was proved by the complainant by examining the postman and has reported as Ext. 7, while in the appellate Court the petitioner-accused had taken the defence that the complainant has failed to prove as to where she got Rs. 8,80,000/- which she claimed to have given to the accused-petitioner and the Trial Court, after considering the evidences, found that there is no sufficient evidence as to where she arranged the aforesaid amount, which was given to the accused-petitioner. Now he is raising a new point which has got no basis and both the judgment do not apply to this case, and as such, his revision is only fit to be dismissed.

6. After hearing both the parties and after going through the evidences and judgment passed by the Trial Court and appellate Court, I find that although the petitioner's defence taken in the Trial Court with regard to the non-service of notice u/s 138 of the Negotiable Instruments Act is concerned, the Trial Court considered the same on the basis of evidences. In appeal he raised another point that the petitioner had not proved that she had sufficient means to give Rs. 8,80,000/- which was also found incorrect by the appellate Court on the basis of the evidences. The Appellate Court found that the complainant had sufficient found, and as such, the gave the same on the assurance of the accused that he will arrange for a house property for her and he failed to arrange any house property. Then, he gave the seven cheques dated 20.2.2006 to the complainant amounting to Rs. 7,65,051/- payable by the S.B.I., Golmuri Branch, which was subsequently presented by the complainant to the S.B.I., Golmuri Branch and it was returned with the note insufficient fund in the account on 22.2.2006. Then, the complainant served legal notice through her lawyer dated 2.7.2006 by registered post with A/D demanding the cheque amount. The accused, on 13.3.2006, has refused to accept the same notice, then, the case was filed against him.

7. The only new law point raised by the petitioner is that when a cheque is issued in respect of current or past liability then only Section 13 8 of the Negotiable Instruments Act is directed and when cheques are issued in respect of uncertain future liability, it does not form the prosecution u/s 138 of the Negotiable

Instruments Act.

8. The petitioner has relied in a decision of Sathavahana Ispat Limited Vs. Umesh Sharma, in the case of M/s. Sathavahana Ispat Ltd. In the case the accused entered into an agreement with the complainant. The complainant agreed to make a credit supply giving a month time for the payment of value of the said made to the accused. As per the agreement, which was entered, the accused deposited a blank signed cheque as security to be used in future course after there is any default in payment of money by the accused in the credit supply made. It is admittedly in the aforesaid case that no money was paid in advance nor the cheques were issued against any credit or any past liability, since the complainant was to supply the goods of credit, that the blank cheques were only kept as security but in the instant case, the accused had accepted Rs. 8,80,000/- from the complainant much before the issuance of the cheques and the received amount was also acknowledged by him by Ext. 5, which has been considered by both the Courts and, as such, in this case the cheques were issued, against the cash payment made to the accused.

9. Thus, in this case, since the cheques were issued in respect of the current or past debt, hence Section 138 of the Negotiable Instruments Act is fully attracted and the two cases relied upon by the petitioner's Counsel are not applicable. There is concurrent finding of fact, as also law against the petitioner and the only point raised by him in law has got no substance.

10. In that view of the matter, I find no merit in this revision application. Accordingly the same is dismissed.

11. The petitioner is on bail as, granted by this Court on 27.7.2009. His bail bond is cancelled and the Court of Mr. Surya Bhushan Ojha, Judicial Magistrate, 1st Class, Jamshedpur is directed to issue a warrant of arrest against the petitioner for serving out the sentence as passed in the case in Complaint Case No. CI 428 of 2006 (T.R. No. 278 of 2009).

12. With the aforesaid direction, this revision application is dismissed.