

(2012) 01 JH CK 0130
In the Jharkhand High Court
Case No : Acquittal Appeal No. 24 of 2008

Rajesh Kumar Sharma

APPELLANT

Vs

The State of Jharkhand and Rajesh Shaw @ Rajesh Saw

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

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

Citation : (2013) 2 AJR 178

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.

2. This acquittal appeal arises out of the Judgment of acquittal dated 9th May 2007 passed by Shri S.K. Choudhary, Judicial Magistrate, 1st Class, Jamshedpur in C/1 Case no. 1100 of 2002/Trial No. 323 of 2007, whereby, the respondent No. 2 accused has been acquitted by the Trial Court below, of the offence u/s 138 of the Negotiable Instruments Act (herein after referred to as the "N.I. Act"), holding that the complainant has failed to prove that cheque in question was issued by the accused for satisfaction of friendly loan as claimed by the complainant.

3. According to the complainant's case, the complainant had given a friendly loan of Rs. 24,000/-to the accused and the accused in consideration of the same had given him a cheque bearing no. 166779 on 2.1.2002 for the amount of Rs. 24,000/-drawn upon Singhbhum Kshetriya Gramin Bank, Gamhariya Branch. The said cheque was deposited by the complainant in the Bank on 1.7.2002, but the same was returned as dishonored due to insufficiency of fund. When this fact was brought to the notice of the accused by the complainant, the accused endorsed on the same cheque with his signature and date and the cheque was again

presented for collection in the Bank on 19.10.2002, but the complainant was again informed on 21.10.2002 that cheque was dishonored due to insufficiency of fund. Thereafter the legal notice of demand was given by the complainant on 1.11.2002 by registered post asking the accused to make the payment to the complainant within 15 days. The notice was received by the accused and in reply thereof, he denied the liability. Hence, the complaint case was filed by the complainant in the Court below.

4. From the record, it appears that evidence was adduced by both the parties in the Court below. The complainant has examined himself as C.W.1 and one more witness, namely, Srikant Katak, who was the Branch Manager of Singhbhum Kshetriya Gramin Bank was examined as C.W.2. The witnesses have supported the case of the complainant. C.W.1 Rajesh Kumar Sharma is the complainant, who has stated in his evidence that the said cheque was dated 20.1.2002 which he had deposited in the Bank on 1.7.2002 but the same was returned dishonored. Thereafter he informed the accused about the dishonor of the cheque and the accused made endorsement on the cheque which was again deposited in the Bank and was again dishonored. He has also stated about the notice of demand. This witness has proved the cheque, which was marked as Ext.1 and the legal notice, which was marked as Ext.2. The postal receipt of sending the legal notice was marked as Ext.3 and the cheque return memos were marked as Ext. 4 and 4/1. The reply to the legal notice was also proved, which was marked as Ext.5. However, he has stated in his cross-examination that the accused had re-endorsed the cheque on 20.4.2002. He has also admitted in his cross-examination that Satya Narayan Sharma, is his father-in-law and there was an agreement for sale and purchase of a land between the accused and his father-in-law, but he has denied the knowledge that his father-in-law has sold only 11 decimals of land to the accused. He has also denied the suggestion that the said cheque for Rs. 24,000/- was given by the accused to the complainant to keep the same as a middle man and to hand over the cheque to his father-in-law when the deal of the land was completed. C.W.2, the Bank official, has proved the signature on the cheque and return memos.

5. The accused had also adduced one witness in defense in the Court below and has also brought on record, certain documents, which were marked exhibits. The accused has examined himself as D.W.1, wherein he has stated that he had entered into an agreement with Satya Narayan Sharma for purchase of 15 decimals of land for consideration of Rs. 2,94,000/-. He has proved his signatures as also the signatures of said Satya Narayan Sharma on all the pages of the agreement, which were marked as Exts.-A series and B series and he has also proved the signatures of the witnesses on the said agreement. Some writings and signatures of Satya Narayan Sharma on the agreement have also been proved. He has deposed about the agreement and has stated that he was given only 11 decimals of land and thereafter, there was another agreement for sale of remaining four decimals of land for consideration of Rs. 78,000/-, pursuant whereunto, he had given Rs. 54,000/- to Muniram Sharma (father of the

complainant) and had given a cheque of Rs. 24,000/-to Rajesh Sharma who had also endorsed the receipt of the cheque on the said agreement, which was proved by the accused and the same was marked as Ext. I. This witness has proved the other signatures on the said agreement also, which was marked exhibits. This witness has further stated that he had put only one signature on the cheque and he had not put other signature on the cheque. He has stated that Satya Narayan Sharma had not given him the remaining four decimals of land and as such, he has filed a money suit against him. In his cross-examination on behalf of the complainant, this witness has denied the signature on the endorsement of the cheque and has stated that the said signature is a manufactured signature. He has also denied the suggestion to have fabricated the signature of the complainant on the agreement and has also denied the suggestion that the cheque was not given as a consideration for four decimals of land. He has also stated that he has filed the plaint and the written statement of the money suit. It may be stated that the plaint and the written statement of the money suit were marked as Exhibits in this case. D.W.2 Vijay Kumar, is a formal witness and he has proved the agreement which were marked as Exts. N and N/1.

6. From perusal of the cheque, which has been brought on record as Ext.1, it is apparent that the cheque was originally dated 20.1.2002, but by overwriting the same, it was made on 20.4.2002 and the date 20.4.2002 is also separately written. There is a signature of Rajesh Saw, the accused, but this signature is denied by the accused in his evidence. He has specifically stated that he made only one signature at the bottom of the cheque. The receiving of the cheque acknowledged by the complainant on the agreement, which is marked as Ext. I, if translated in English, shall reads as follows:

Received a cheque of Rs. 24,000/-of Account no. S.B. 1233 of Singhbhum Kshetriya Gramin Bank, Gamhariya Branch, bearing cheque no. 166779.

There is signature of the complainant thereon.

7. From perusal of the impugned Judgment, it appears that in course of hearing of the case, this writing and signature was denied by the complainant. The complainant was given the liberty to get the same examined by the Handwriting Expert, which was refused by the complainant. The said order was also challenged by the complainant in revision, which was also dismissed. The Court below has come to the following finding with respect to the same in the impugned Judgment, which reads as under :

So far as the noting (Ext-I) made by the complainant at the agreement dated 03.12.01 which have also got force of mark exhibit along with the signatures of the witnesses as Ext. J is concerned, the pleadings that it is false and fabricated and it is not in the writing and under signature of the complainant was raised by the learned counsel for the complainant at the time of argument and this Court had given the complainant liberty to get the signatures of the complainant

verified by hand writing expert but the complainant did not do so and filed a revision against that order vide Criminal Revision no. 163/06 before the court of the sessions and the respected Sessions Judge vide order dated 21.01.07 dismissed the Revision. So far as the pleadings of the learned counsel for the complainant to the effect of the hand writing that the noting (Ext-I) at the agreement is not in the writing and signature, this Court however, is not a hand writing expert but from bare perusal of the writings and signatures which has been made in English and Hindi also made at the cheque and the signatures in Hindi made at the S.A. of the complainant and the signature in English made at the Wakaltnama and many haziris of the complainant there is quite similarity and even a person of average intelligence can say that the writing and signatures has been made by the same person who has filed this case by way of making his signatures at the complaint petition, Wakalatnama, S.A., deposition and many haziris and as such, the pleading of the learned counsel for the complainant is not at all sustainable either in the eye of law or in fact and hence, it is established beyond all reasonable doubts that the writing and the signature at the agreement (Ext-I) has been made by the complainant.

8. The Court below has also held that the cheque was issued to the complainant not in terms of a legal enforceable debt or any liability such as friendly loan, rather, it was issued by way of advance payment as a part of the purchase price of the land and the same does not come within the purview of the offence u/s 138 of the N.I. Act as the complainant was only the preserver of the cheque as a middle man, in dealing of the land, which was not completed. Accordingly, the Court below has acquitted the respondent accused of the accusation.

9. Learned counsel for the appellant complainant has submitted that the impugned Judgment of acquittal passed by the Court below is absolutely illegal, inasmuch as the complainant has been able to prove the fact that cheque was produced in the Bank within due date and when the same was dishonored, the date was changed under re-endorsement of the accused and when again the same was dishonored, the legal notice of demand was given to the accused. In reply to that, the accused denied the liability and as such, the complaint was filed within time. Leaned counsel has further submitted that there is a presumption against the accused under Sections 118 and 139 of the N.I. Act which the complainant has not been able to rebut. Learned counsel has accordingly submitted that it is a fit case in which the Judgment of acquittal be set aside and the accused had found guilty for the offence u/s 138 of the N.I. Act and be suitably punished for the same.

10. Learned counsel for the respondent accused, on the other hand, has submitted that there is no illegality in the Judgment passed by the Court below, inasmuch as, the accused has been able to rebut the presumption against him by bringing on record the agreement for sale, on which the complainant himself has received the cheque even mentioning the cheque number. Though the complainant has denied his signature, but the Court below had given the liberty

to the complainant to get it verified by a Handwriting Expert, which was denied by the complainant and in that view of the matter, the Court below has come to the finding that the cheque was handed over the complainant as a middle man in the dealing of the land, which was not completed. It has been submitted that the accused has been able to rebut the presumption against him and thereafter the complainant has failed to prove his case beyond all reasonable doubts. Learned counsel has accordingly submitted that there is no illegality in the Judgment passed by the learned Court below.

11. Having heard learned counsel for both the parties and upon going through the record, I find that in the complaint, the complainant has stated that he had produced the cheque in question in the Bank on 1.7.2002 and when the cheque was returned as dishonored, due to insufficiency of fund, the fact was brought to the notice of the accused and the accused re-endorsed the cheque with his signature and date. Thus, it is apparent from this statement that the change of date and re-endorsement by the accused was made on or after 1.7.2002. However, in his cross-examination, this witness has stated that endorsement was made by the accused on 20.4.2002. From perusal of the cheque which has been proved as Ext.1, it appears that the date was changed to 20.4.2002. Thus, it is apparent that if the cheque was endorsed on 1.7.2002 or thereafter, there was normally no occasion for putting the date as 20.4.2002. This apart, the cheque which was originally dated 2.1.2002 (as stated in complaint) or 20.1.2002, there was no occasion for its re-endorsement on 20.4.2002 in view of the fact that on the said date, the cheque itself was a valid cheque and there was no occasion for its re-endorsement on the said date. The accused has specifically stated in his evidence that he had put only one signature on the cheque and he has denied to have made any re-endorsement on the cheque. In that view of the matter, I am of the considered view that re-endorsement of the cheque with changed date makes the cheque absolutely doubtful and it does not fit in with the complainant's case. This apart, the accused has also brought on record, the receiving of the cheque by the complainant, which was proved on the agreement as Ext. I in which, the cheque number is clearly stated by the complainant himself. Though the writing and signature is denied by the complainant, but the liberty given by the Court below for getting the same verified, was refused by the complainant and as such, the Court below has rightly come to the conclusion that the said cheque was actually given to the complainant as a middle man in the land dealing which was never completed. As such, the complainant has failed to prove that there was a valid consideration of issuing of the cheque. It is a well settled principle of law that role of the accused is over if he has been able to create a doubt on the complainant's case by bringing cogent evidence on record and in this case, the accused has fully succeeded in the same. In this connection, the law is well settled by the Hon'ble Supreme Court of India in the case of *Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand Pyarelal*, reported in (1993) 3 SCC 35, (para 12) wherein, it has been held as follows:

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 defense. 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 disapprove 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 defense. 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 non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

(Emphasis supplied)

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

12. This apart, in view of the fact that the complainant has failed to prove beyond all doubts that the overwriting and the change in the date of the cheque was made by the accused, the cheque itself had become void in view of section 87 of the N.I. Act, as there was material alteration in the same.

13. In view of the aforementioned settled principles of law, I am of the considered view that the accused has been able to rebut the presumption against him by showing that the existence of consideration was improbable or doubtful and the appellant complainant had failed to prove its case in the Court below beyond all reasonable doubts. This apart, the cheque itself had become void in view of section 87 of the N.I. Act, as there was material alteration in the same. Accordingly, there is no illegality in the Judgment of acquittal passed by the learned Court below and the same cannot be interfered with.

14. Consequently, I do not find any merit in this appeal, which is, accordingly, dismissed.