
(2016) 02 BOM CK 0071

In the Bombay High Court

Case No : Criminal Appeal No. 819 of 2003, Criminal Appeal No. 631 of 2006

Shivaji s/o Kishanrao Chinchane

APPELLANT

Vs

Jagdish s/o Rajeshwarrao Choudhary

RESPONDENT

Date of Decision : 18-02-2016

Acts Referred:

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

Citation : (2016) ALLMRCri 1693 : (2017) 1 BC 284 : (2016) 3 BomCR(Cri) 509 : (2016) 3 CivCC 689 : (2017) 1 DCR 311 : (2016) 4 MhLJ 262 : (2016) 3 MhLJCri 426 : (2016) 2 NIJ 758 : (2016) 5 RCRCriminal 679

Hon'ble Judges : M.T. Joshi, J.

Bench : Single Bench

Advocate : S.P. Chapalgaonkar, Advocate, for the Appellant; Pratap Mandlik, Advocate with P.V. Mandlik, Senior Advocate and A.S. Gandhi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

M.T. Joshi, J. - Heard both sides.

2. The parties in both the present appeals are common. Both the appeals have arisen out of the common trial and two different complaints for the offence punishable under section 138 of the Negotiable Instruments Act were filed by the present appellant/ complainant as the cheques involved in these two appeals are of two different periods only. As the common issues have arisen in these proceedings, both the present appeals are being decided by this common judgement.

3. The appellant in both the cases came with a case that he is the proprietor of one Laxmi Fertilizers at Pathri. The respondent/accused is the proprietor of one Manoraj Krushi Sadhana at the same town. The respondent/accused regularly used to obtain on credit fertilizer, seeds, insecticides, etc. from the appellant. Eventually, an amount of Rs. 3,50,000/- remained due from the respondent. The respondent promised to pay the same after March, 2000. In the circumstances,

he issued eight cheques for an aggregate amount of Rs. 1,75,000/-.

Out of these eight cheques, two cheques for Rs. 20,000/- each dated 01.12.1999 and 15.12.1999 were accordingly presented by the appellant to his banker for onward encashment from the bank of the respondent. On 3rd June, 2000, he, however, received a report that these two cheques were dishonoured as no arrangement of funds was made. In the circumstances, the appellant issued notice to the respondent on 14th June, 2000 by registered post acknowledgement due. The same was duly received by the respondent on 17th June, 2000. He even did not reply the said notice and therefore, the case bearing Summary Criminal Case No. 521 of 2000 was filed in the court of Judicial Magistrate First Class, Pathri.

As regards the remaining six cheques for Rs. 1,35,000/-, those were presented to the very same bank on 10th March, 2000. Those were returned for want of funds on 9th June, 2000. The appellant, therefore, issued notice by registered post acknowledgement due on 23rd June, 2000. The respondent received the said notice but did not reply the same. In the circumstances, the Summary Criminal Case No. 544/2000 was filed in the Court of Judicial Magistrate First Class, Pathri.

4. The defence of the respondent/accused in both the cases, as can be seen from the cross-examination of the appellant/complainant, is that the appellant was a dealer of products of a company, named and styled as Excel Industries (India) Company. The appellant used to provide the products of the said company to the respondent. It was agreed between the appellant and the said company that at the time of supplying the goods on credit, the appellant should obtain blank signed cheques from such purchasers. In the circumstances, the appellant obtained nine blank signed cheques from the respondent for said Excel Company. Though the respondent did not receive goods worth Rs. 3,50,000/-, by misusing the blank signed cheques, which were, in fact, supplied for Excel Company, the present complaints came to be filed.

5. Before the learned Judicial Magistrate First Class, in both the cases, the appellant examined himself. He also examined the bankers. On behalf of the respondent, no oral evidence was placed. In the subsequent proceeding i.e. Summary Criminal Case No. 544/2000, he, however, filed certified copy of the judgement delivered in the earlier case.

The learned Judicial Magistrate First Class observed that the contents of the complaint are vague. Specific dates of purchase, promise to pay are not given. No documentary evidence is produced to show that the goods are sold on credit. During cross-examination in the earlier proceeding, the appellant has deposed in the cross-examination that he used to make entry in kaccha akhatawani about the goods sold and if in case the same is traced out, the same was not filed. Further, the copies of the licence filed by the respondent on record would show that he had started the business only in the year 1998. Therefore, it would be

improbable that a substantive supply of goods on credit would have been made by the appellant to the respondent. No vouchers or bill under the signature of the respondent were placed. Though the certified copy of Special Darkhast filed against the respondent for execution of a decree passed in Special Suit No. 1/2001 was filed on record, the learned Judicial Magistrate First Class observed that the same has been denied by the respondent. Further, the passing of the decree itself would not be sufficient to show that the cheques were issued to discharge any legally enforceable liability. Therefore, the complaint came to be dismissed.

6. In the next of the proceeding, the dismissal of the complaint and acquittal of the respondent from the earlier proceeding was also taken into consideration. Hence, the present appeals.

7. Mr. S.P. Chapalgaonkar, learned counsel for the appellant took me through the material on record. He submitted that the learned Judicial Magistrate First Class had appreciated the evidence as if the learned Judge was dealing with a civil suit. The presumptions under section 118A, 138 and 139 of the Negotiable Instruments Act are not at all taken into consideration though the learned Judicial Magistrate First Class had referred the same. Further, the learned Judicial Magistrate First Class failed to consider the fact that even the notices were not replied by the respondent and there was nothing on record which would show that the presumptions had arisen in the case stood rebutted. He, therefore, submitted that both the appeals be allowed.

8. On the other hand, Mr. Pratap Mandlik, learned counsel for the respondent, submitted that the learned Judicial Magistrate First Class has properly considered the evidence on record. He found that the presumption has been rebutted in both the cases and therefore, no interference in the orders is warranted.

9. On the basis of above material, the following points arise for my determination.

I. Whether the appellant has proved that in Summary Criminal Case No. 521/2000, the respondent has failed to make payment of the amount under the two cheques within the prescribed period despite service of notice of dishonour of the two cheques ?

II. Whether the appellant in Summary Criminal Case No. 544/20000, the respondent has failed to make payment of the amount under the six cheques within the prescribed period despite service of notice of dishonour of the six cheques ?

III. Whether the presumption that the cheques were issued towards the legally enforceable liability stood rebutted in the cases or in any of the case ?

My finding to the above points No. [I] and [II] are in the affirmative and to the point No. [III] is in the negative. The appeals are, therefore, allowed and the respondent is convicted in both the cases, for the reasons to follow.

REASONS

10. The passing of the cheques, their presentation in the bankers and dishonour of the same is a matter of record, which has been also proved by the rest of the witnesses. The issue is as to whether the presumption that has arisen due to the passing of the cheques stood rebutted.

11. The first and foremost thing that requires consideration is that the respondent did not reply the notices received by him. In Summary Criminal Case No. 521/2000, we have the copy of the registered notice sent by registered post acknowledgement due. The acknowledgement under the signature of the respondent has been duly placed on record at Exhibit-32. The defence that the signed blank cheques were handed over to the appellant for onward forwarding the same to the Excel Company was taken only during the cross-examination to the appellant.

The appellant, in cross-examination, denied that there was any such agreement to obtain blank signed cheques for the Excel Company.

12. It is to be noted that the respondent did not suggest as to when he passed those cheques. He also did not detail as to when the transactions of obtaining the products of Excel Company on credit had occurred. Be that as it may, the respondent is admittedly a businessman. The cheques were dishonoured by his banker on the given date. Still he did not take any action regarding the misuse of blank signed cheques at any time. Further, had his transaction with the Excel Company been closed by settling the accounts, the trader like him would not have failed in asking for return of nine blank cheques signed by him either from the appellant or from the Excel Company. The respondent, however, maintained benevolent silence till the date of cross-examination of the appellant in the witness box.

13. It is true that the appellant has filed the bills and vouchers claiming that he obtained the signatures of the munim or the employee of the respondent under those bills. He also did not file any account books to corroborate the transactions. He had, however, filed certified copy of the execution proceeding which would show that a decree was already passed against the respondent for recovery of money concerning the present transactions.

14. The observation of the learned Judicial Magistrate First Class, however, would show that the matter was dealt with for finding out as to whether the appellant has proved beyond reasonable doubt that the respondent has obtained the goods on credit worth Rs. 3,50,000/-. The learned Judicial Magistrate First Class observed that the contents of the complaint are very vague. Further, in the view of the learned Magistrate, it would be improbable that a businessman would provide goods on credit to a new-comer.

15. Mr. S.P. Chapalgaonkar, learned counsel for the appellant relied on the ratio laid down in the cases of "K.N. Beena v. Muniyappan and another", reported in

(2001) 8 S.C.C. 458 and "Hiten P. Dalal v. Bratindranath Banerjee", reported in (2001) 6 S.C.C. 16, to buttress his argument that the court is first required to presume the liability of the drawer for the amount of the cheque where the factual basis for such presumption is established. The factual basis is that the cheque is passed by the drawer, the same is presented to the banker and the same is dishonoured. The presumption thus arisen can be rebutted by the drawer. Such rebuttal does not have to be conclusively established. However, the material in this regard is required to be placed.

In the case of "Hiten P. Dalal v. Bratindranath Banerjee" (cited supra), the Supreme Court has held that mere denial in the reply to the legal notice would not be enough.

16. Here, in the present case, there is no reply much less any denial of the transactions. The learned Judicial Magistrate First Class failed to take into consideration that a decree by the civil court was already passed concerning the transactions. In that view of the matter, in my view, the learned Judicial Magistrate First Class, in both the cases, has grossly erred in dismissing the complaint and in acquitting the respondent. Hence, the following order :-

17. (I) Both the appeals are allowed.

(II) The orders dated 3rd September, 2003 and 30th June, 2005, passed by the Judicial Magistrate First Class, Pathri in S.C.C. No. 521/2000 and S.C.C. No. 544/2000, respectively, acquitting the respondent in both the cases from the offence punishable under section 138 of Negotiable Instruments Act, are hereby set aside.

(III) Instead, the respondent is convicted for the offence punishable under section 138 of the Negotiable Instruments Act in each of the case (both appeals). He is directed to pay fine of Rs. 60,000/- (rupees sixty thousand) in Criminal Appeal No. 819 of 2003 (S.C.C. No. 521/2000) and Rs. 2,00,000/- (rupees two lacs) in Criminal Appeal No. 631/2006 (S.C.C. No. 544/2000), within a period of ten weeks from the date of this order. In default of payment of fine of Rs. 60,000/- and Rs. 2,00,000/-, as directed above, the respondent to suffer simple imprisonment for a period of three months and six months, respectively.

(IV) The present appellant would be entitled to receive the fine amount of Rs. 60,000/- (rupees sixty thousand) and Rs. 2,00,000/- (rupees two lacs) as compensation, upon deposit by the respondent.

18. Both the appeals are accordingly allowed and disposed of.