
(2019) 08 GAU CK 0057
In the Gauhati High Court
Case No : Criminal Appeal No. 185 Of 2018

Surana Finance

APPELLANT

Vs

Ananta Talukdar And Anr

RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138
Code Of Criminal Procedure, 1973 — Section 391, 482

Citation : (2019) 08 GAU CK 0057

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : D K Kothari, K Bhattacharjee

Final Decision : Dismissed

Judgement

1. Heard Mr. B. Deka, learned counsel appearing for the appellant as well as Mr. K. Bhattacharjee, learned counsel for the respondent.
2. This appeal is preferred against the impugned judgment of acquittal dated 18.01.2018, passed by the learned Judicial Magistrate, First Class, Kamrup (M), Guwahati in connection with CR Case No.1743C/2013 under Section 138 of N.I. Act.
3. The appellant as a complainant filed a complaint before the Court of the learned Chief Judicial Magistrate, Kamrup (M), Guwahati under Section 138 of N.I. Act, 1881 against the sole accused person/respondent No.1. The complainant Surana Finance is a proprietary concern of Sri Rewantmal Surana and the case was filed through its Manager, Mukesh Surana contentding inter alia that the accused/respondent took finance for a vehicle under hire purchase agreement 07.06.20112 with the complainant bearing registration No. AS-01DD-2391 (709 Truck) and also took some personal loan from the appellant and towards the part payment of his debt and liabilities pertaining to hire-purchase agreement. Towards the liabilities to the complainant, the accused

issued a cheque bearing number 725387 dated 10.01.2013 for Rs.50,000/- in favour of the complainant. The cheque was deposited for encashment but was dishonoured by the bank. Thereafter the legal notice was issued to the accused demanding the cheque amount but as it was not paid the complaint was filed under Section 138 of N.I. Act.

4. The learned court took cognizance of the offence under Section 138 of N.I. Act and the accused/respondent contested the case and denied the charge under Section 138 of N.I. Act. The complainant examined two witnesses in support of the claim and defence also examined two witnesses in support of the plea, that cheque was issued as a security while taking the loan for the vehicle and the complainant has forcibly repossessed the vehicle from his father in his absence.

5. The learned trial court framed the following points for determination:

i) Whether the accused issued the cheque No.725387 dated 10.01.2013 in favour of the complainant for the discharge of any part of his legally enforceable debt or liabilities?

ii) Whether the cheque was dishonoured for insufficient funds in the account of the accused?

iii) Whether the accused received the demand notice issued by the complainant regarding the dishonour of the cheque?

iv) Whether the accused has failed to repay the cheque amount to the complainant within the stipulated period and thereby committed the offence under Section 138 of N.I. Act, 1881?

6. The learned trial court has elaborately discussed all the above points having regard to the evidence on record and comes to a finding that as the cheque in question was issued in discharge of part payment of unpaid installment pertaining to the hire purchase agreement entered between the parties and as the vehicle has been repossessed by the complainant company agreement terminated ipso facto and there is no legally enforceable debt and no offence under Section 138 N.I. Act is made out against the accused/respondent and acquitted the accused from the charge. Challenging the order of acquittal, present appeal has been preferred.

7. According to the learned counsel for the appellant as the cheque in question was issued towards the part payment and there is no denial of such issuance of cheque, the accused is under obligation to honour the cheque. On the other hand, the learned counsel for the respondent has contended that as soon as the vehicle was repossessed by the complainant company, the agreement got terminated and there cannot be any legally enforceable debt against the respondent/ the hirer.

8. Notable aspect in the present case is that the accused/respondent took the vehicle on loan the hire purchase agreement and the cheque was issued towards

part payment. It is also evident from the record that due to default on the part of the accused/respondent towards payment of installment the vehicle was repossessed by the complainant company. Now the crux of the matter would be whether the respondent is liable to an offence under Section 138 N.I. Act under these circumstances?

9. The complainant/Finance Company examined its Manager as PW1 who has stated all about the facts that the accused took a finance from the complainant under hire purchase agreement dated 07.06.2012 whereby he took a finance of Rs.3,50,000/- for a period of 3 years payable in 35 installments. It is stated that the accused as against the due of Rs.66,750/- as on 07.01.2013 he issued a cheque of Rs.50,000/- towards the payment of installments the said cheque was dishonoured. On the other hand, the accused/respondent examining himself as DW2 has stated that due to default in his repayment of installment, the complainant repossessed the vehicle and through its agent. His father paid some installments after repossession but the vehicle was not handed over to him. Father of the accused/respondent as DW1 has also asserted that the vehicle was repossessed by the complainant's agent. Repossession of the vehicle although was admitted by the PW1 but according to him the vehicle was returned to the accused/respondent which, however, could not be proved by any sort of oral or documentary evidence by PW1.

10. On the very issue, the learned trial court in para-14 onwards of the judgment it has been discussed that although the cheque was dishonoured when presented for encashment but as the complainant has taken repossession of the vehicle the cheque in question was not issued against legally enforceable debt. While arriving to the decision the learned trial court has placed reliance upon the decision of *Sudha Beevi vs State of Kerala*, 2004 CrL.L.J. 3418, wherein it has been held that once the financier institutions exercise the option of seizure of vehicle the cheque cannot be permitted for encashment and only recourse available to the financier is to initiate appropriate legal remedy for recovery of the balance amount, and no offence under Section 138 of N.I. Act would be attracted for dishonour of cheque issued by the accused.

11. It would be appropriate to reproduce the observation made in *Sudha Beevi* (supra):

"If the hire purchase agreement involved in the case between the financial institution and the hirer stood returning by the act of the parties, the cheques which were accepted by the financial institution towards advance for repayment of the hire would become instrument without consideration and that they will be instrument for which consideration has made and under the said circumstances the remedy available to the financial institution is only to realize the balance hire due by filing appropriate suit for damage on account of breach of terms of agreement since the financial institution has admittedly got repossession of the vehicle, thus as a consequence of seizure of vehicle, the financial institution has exercised one of the options available to him under the agreement and as such

the cheque in its hand thereafter became instrument for which a consideration has failed and if presented for payment and gets dishonoured, no offence punishable under Section 138 N.I. Act would be attracted."

12. In view of the ratio laid down in the aforesaid decision, the learned trial court held that as the repossession of the vehicle has taken by the complainant, the hire purchase agreement entered between the parties gets terminated. In the present case as has been discussed above the complainant has admitted about repossession of the vehicle for non-payment of one installment but failed to prove that the vehicle was redelivered to the accused/respondent after making installment on their part. Their evasive stand will not prevail as the defence has specifically stated that vehicle was never returned to them after repossession by the complainant. The learned trial court has rightly appreciated each and every aspect of the matter that the accused/respondent is no more liable for such issuance of the cheque as the same is not legally enforceable debt.

13. The statement of account, vide Ext.5, reveals that even after default as on 07.01.2013, various installments were deposited on 10.03.2013 covering the period up to 07.07.2014, meaning thereby the respondent has cleared all the installments and till yet the complainant who took the repossession of the vehicle did not return the vehicle to the respondent/hirer. Obviously, the cheque can no more be treated as "issued against legally enforceable debt."

14. The defence has produced the Ext. A-Repossession of Vehicle Inventory List dated 06.06.2013, the disputed cheque is dated 10.01.2013 and thus the complainant parallelly took two options to recover the vehicle and to realize the amount which is not permissible. So far as the other issue is concerned as regard service of demand notice and return of cheque memo etc., became insignificant as the prime issue concerned that the cheque was issued against legally enforceable debt is not proved in this case, ensuring penal consequences.

15. It may be mentioned here that during pendency of the appeal the respondent filed an Interlocutory Application No.232/2019 under Section 391 read with Section 482 Cr.P.C. for admitting additional documents, i.e. Ext.B which was issued by the complainant to the registering authority, Kamrup dated 10.03.2014 whereby the complainant has intimated about the termination of the hire purchase agreement between the parties in respect of the vehicle in question. It is contended in the petition that the hire purchase agreement was entered between the parties on 07.06.2012 and due to non-payment of EMI the vehicle was repossessed by the financier on 06.06.2013 vide Ext.A and the appellant did not return the seized vehicle to the respondent although the appellant has collected the EMI till 07.07.2013 without handing over the vehicle. It is stated in the petition that in order to find out as to whether the vehicle was handed over to any person they made an enquiry in the Office of DTO, Metro then they came to know that the appellant in the year 2014 submitted a Form-35 before DTO that there is no liability on the part of the petitioner and the hire purchase agreement was terminated. The Ext.B issued by the Surana Finance to the

registering authority, Kamrup which reads as follows:-

"Dear Sir,

Ref.: Vehicle No.AS-01DD 2391

Hirer Ananta Talukdar,

Dated 10.03.2014

I/We wish to inform you that we have received in full settlement of the hire purchase agreement entered into us by the above hirer in respect of the said vehicle No.AS-01 DD 1391 and we have no objection for cancellation of the HP endorsement made in our favour on the registration certificate of the above vehicle. We also forward herewith the HP termination Form No.35, duly completed by us.

Thanking you.

Yours faithfully,

Sd/-illegible

For Surana Finance

Enclosed: As above HP termination Form No.35"

The learned counsel for the respondent Mr. Bhattacharjee has placed reliance upon the decision of Hon'ble Supreme Court in (2019) STPL 57 SC Bridg Sukhjeet Singh (retd.) NBC vs State of Uttar Pradesh wherein in respect of additional evidence at appellate stage it has been held that "there are no fetters on the power under Section 391 of the Appellate Court. All powers are conferred on the Court to secure ends of justice and the ultimate object of judicial administration is to secure ends of justice. Court exists for rendering justice to the people."

Accordingly, it has been contended that there is no bar to accept such document which has been issued by public department, a competent authority and there is no denial from the other side.

16. A copy of the petition was furnished to the appellant side to submit their response but they have not filed any written objection against the said document but has argued in course of hearing that no such additional evidence can be submitted by the respondent side to fill up their lacuna. The aforesaid document was issued by the District Transport Office (CTC). Without commenting about the admissibility of such document it can be noted that the same document itself tallies with the document of the appellant side vide Ext.5. It has been discussed above that the respondent/accused has paid EMI up to 07.07.2013 and in the meantime the vehicle was repossessed on 06.06.2013 and there being no denial on the part of the appellant side despite getting the scope of denial, to deny the

said document, it can be held that the hire purchase agreement between the parties already terminated. Even otherwise also once the complainant has opted to receive the installment after repossession of the vehicle and also terminated the hire purchase agreement, the respondent/accused cannot be punished under Section 138 of N.I. Act. In order to attract the penal provision, such debt must be legally enforceable, which is not the case of the appellant. By suppressing the material fact of repossession of vehicle, appellant filed the case which is not maintainable.

17. In view of the legal proposition and the facts and circumstances, it can be held that the learned trial court has rightly acquitted the accused person, which calls for no interference.

18. The appeal is devoid of merit, hence dismissed.

19. Return the LCR.