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(2012) 07 RAJ CK 0025

In the Rajasthan High Court

Case No : Criminal Leave to Appeal No. 116 of 2010

Vardhman Jewellers Kunwaria Proprietor Balwant — APPELLANT

Vs

Ramchandra — RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 313
Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (2013) 1 WLN 207

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Advocate : S.S. Sisodia, for the Appellant;

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The appellant is aggrieved by the judgment dt. 27.08.2010 passed by the Judicial Magistrate, First Class, Railmagara, Rajsamand whereby the learned Magistrate has acquitted the accused- respondent, Ramchandra, for offence under Sec. 138 of the N.I. Act. The brief facts of the case are that on 10.03.2006, the appellant preferred a complaint under Sec. 138 of N.I. Act before the learned Judicial Magistrate Railmagra, inter alia, alleging that the respondent has borrowed money and in view of that he issued two cheques of Rs. 15,600/- and Rs. 10,000/- for repayment. The aforesaid cheques were deposited for encashment. However, the same were dishonored. The appellant sent a notice. Hence the complaint under Sec. 138 N.I. Act.

2. The appellant examined himself as a witness and submitted six documents. The accused was examined under Sec. 313 Cr.P.C. After hearing both the sides and after going through the oral and documentary evidence, the learned Magistrate acquitted the accused-appellant. Hence, this criminal leave to appeal by the complainant.

3. The learned counsel for the appellant has contended that the learned

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Magistrate has overlooked the fact that the accused-respondent had admitted his signature on the cheque. Once this admission is made, the presumption under Sec. 139 of N.I. Act should have been drawn by the learned Magistrate. However, he has failed to do so. Instead, he has given reasons which are neither cogent, nor relevant for the just decision of the case. Hence, the impugned judgment needs to be interfered with.

4. Heard the learned counsel and perused the impugned judgment.

5. In the case of Kumar Exports Vs. Sharma Carpets, , the Hon''ble Supreme Court has clearly held that the presumption under Sec. 139 is not an absolute presumption but is a rebuttable one. Once the presumption is drawn against the accused, the burden is shifted upon him to rebut the presumption. In the present case, although the accused-respondent has admitted his signature on the cheque, but he has submitted sufficient evidence to rebut the presumption. According to the accused-respondent, he had carried out certain wood work for the appellant. Since there was a dispute about the payment for the wood work, a cheque which was given by him and whose amount he had already returned, was misused by the appellant. The fact that the accused-respondent had done the wood work, was denied by the appellant, although in another case, he had admitted the said fact. Moreover, the learned Magistrate has noticed the fact that although the appellant was a businessman who had kept detailed account books, while he had submitted the accounts books with regard to the other persons, he had not submitted the relevant documents which dealt with the accused-respondent. The learned Magistrate has noticed the fact that the appellant has been changing his stand in the present case vis-?-vis his testimony in another case. Thus, according to the learned Magistrate, the appellant was not a witness of sterling worth.

6. It is, indeed, a settled position of law that the complainant is to prove its case through cogent evidence. But, a complainant who is a felicitating witness cannot establish his case. Since the appellant, the complainant in the case, has repeatedly changed his stand, he has failed to prove his case. Hence, the learned Magistrate was justified in concluding that the accused-respondent has succeeded in rebutting the presumption under Sec. 139 of the Act. Therefore, in the opinion of this Court, he was justified in acquitting the accused-respondent for offence under Sec. 138 of N.I. Act. Thus, there is no illegality or perversity in the impugned judgment dt. 27.08.2010. This criminal leave to appeal is, hereby, dismissed.

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