

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1598 OF 2019
(Arising out of SLP(CRL.)No.10408 of 2018)

RAHUL SUDHAKAR ANANTWAR

Appellant(s)

VERSUS

SHIVKUMAR KANHIYALAL SHRIVASTAV

Respondent(s)

J U D G M E N T

R. BANUMATHI, J.:

Leave granted.

(2) This appeal arises out of judgment and order 05.09.2018 in Criminal Appeal NO.140 of 2017 passed by the High Court of Judicature at Bombay, Nagpur Bench, in and by which the High Court has reversed the acquittal of the appellant under Section 138 of the Negotiable Instruments Act, 1881 and convicted him under Section 138 of the said Act and imposed a fine of Rs.5,00,000/- (Rupees Five Lakhs) and also costs of Rs.20,000/- (Rupees Twenty Thousand) total Rs.5,20,000/- (Rupees Five Lakhs Twenty Thousand)

(3) Brief facts while led to filing of this appeal by way of special leave petition is as under. The appellant-accused and the respondent-complainant entered into an Agreement of Sale dated 28.02.2012 as per which the appellant-accused agreed to sell the property, registered owner of which is the mother of the appellant, in favour of the respondent-complainant. The

parties have agreed that the sale consideration of the said property would be Rs.25,00,000/- (Rupees Twenty Five Lakhs) and the respondent-complainant has paid an advance of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) under the said Agreement dated 28.02.2012. Due to certain circumstances, the Agreement, as agreed by the parties, could not be fructified. The appellant-accused had issued a cheque from the account of a firm named Synergy and Solution Incorporation of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) in order to refund the earnest money to the respondent-complainant. When the said cheque was presented for clearance by the respondent-complainant the same was returned with the endorsement "Account Closed". After issuing the legal Notice dated 23.08.2013, the respondent-complainant filed a complaint against the appellant under Section 138 of the N.I. Act.

(4) Upon consideration of evidence, the Trial Court acquitted the appellant-accused on the ground that the cheque was issued from the account of a firm, namely, Synergy and Solution Incorporation and the said account was in the name of one Vipin Dhopte and not in the name of the appellant-accused. The Trial Court also pointed out that the said account was closed due to the negative balance on 11.03.2006. The Trial Court acquitted the appellant-accused by observing that the complainant has failed to prove the guilt of the accused under Section 138 of the N.I. Act beyond reasonable doubt and that the appellant has nothing to do with the cheque issued on the account of the firm named Synergy and Solution Incorporation.

(5) Challenging the order of acquittal of the Trial Court, the respondent-complainant has filed an appeal before the High Court. The High Court has pointed that the appellant has not disputed his signature on the said cheque presented for clearance and that there is nothing on record to show that the said Firm by name Synergy and Solution Incorporation was a firm or a company and that the account was maintained by one Vipin Dhopte. The High Court has also held that it is not the case of the appellant-accused that other entries in said cheque is not in his own handwriting. The High Court has held that the Trial Court has not appreciated the evidence in the right perspective and in the light of the provisions of Section 139 of the N.I. Act which create statutory presumption in favour of the holder of cheque and the burden is on the accused to rebut the statutory presumption. Observing that there is sufficient evidence on record to show that the said cheque was issued to discharge "legally enforceable debt", the High Court has reversed the acquittal of the appellant-accused and convicted him under Section 138 of the N.I. Act and imposed fine amount of Rs.5,00,000/- (Rupees Five Lakhs) and also imposed costs of Rs.20,000/- (Rupees Twenty Thousand) on the appellant.

(6) We have heard Mr. G.L. Bajaj, learned counsel appearing for the appellant-accused and Mr. Sudheer Voditel, learned counsel appearing for the respondent-complainant and also perused the impugned judgment and the evidence/materials on record.

(7) Admittedly, the parties had entered into an Agreement of Sale dated 28.02.2012. It is also an admitted fact that the respondent-complainant had paid Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) as an advance/earnest money to the appellant-accused as per the terms of the Agreement. As pointed out by the High Court, the appellant-accused has not disputed his signature on the said cheque presented for clearance. Contention of the appellant that the cheque issued in the name of the Firm, named, Synergy and Solution Incorporation was removed from his office table is not convincing nor the same is supported by any evidence. As pointed by the High Court in the statutory presumption under Section 139 of N.I. Act, the appellant-accused has not satisfactorily rebutted the statutory presumption. In view of the above, we do not find any ground warranting interference with the conviction of the appellant-accused under Section 138 of N.I. Act.

(8) Insofar as the amount directed to be deposited, the High Court has directed the appellant to deposit Rs.5,00,000/- (Rupees Five Lakhs) and also costs of Rs.20,000/- (Rupees Twenty Thousand) whereas the cheque amount is only Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand). Though Section 138 of the N.I. Act enable the court to impose the higher amount than the cheque amount, however, considering the facts and circumstances of the case we are of the view that the amount of Rs.5,00,000/- (Rupees Five Lakhs) ordered to be deposited is on the higher side and the same has to be reduced to Rs.2,80,000/- (Rupees Two Lakhs Eighty Thousand) plus costs

of Rs.20,000/- (Rupees Twenty Thousand). Ordered accordingly. Mr. Sudheer Voditel, learned counsel appearing for the respondent-complainant, has submitted that the respondent-complainant has already received Rs.2,50,000/- plus Rs.20,000/- (towards costs). An amount of Rs.30,000/- (Rupees Thirty Thousand) be disbursed to the respondent-complainant and the balance amount of Rs.2,20,000/- (Rupees Two Lakhs Twenty Thousand) be returned to the appellant-accused along with the accrued interest, if any.

(9) The appeal is accordingly disposed of.

.....J.
(R. BANUMATHI)

.....J.
(HRISHIKESH ROY)

NEW DELHI,
OCTOBER 21, 2019.