[2024] 4 S.C.R. 255 : 2024 INSC 288

M/S Rajco Steel Enterprises
v.
Kavita Saraff and Another

(Petition for Special Leave to Appeal (Criminal) No. 5583 of 2022)

09 April 2024

[Aniruddha Bose* and Sanjay Kumar, JJ.]

Issue for Consideration

Issue arose as to whether the cheques were issued in discharge of a debt and if so, whether the respondent no.1 was able to rebut the presumption in terms of s. 118/139 of the Negotiable Instrument Act, 1881.

Headnotes

Negotiable Instrument Act, 1881 – ss. 118/139 – Dishonour of cheque – Sum involved therein, if advanced in discharge of a legally enforceable debt – Raising of presumption u/s. 139 – Complaint by partnership firm alleging dishonour of cheques issued by the respondent no. 1 on the ground of insufficiency of funds – Case of partnership firm that it had granted financial assistance to the respondent no.1 and the said cheques were issued in discharge of her liability – Respondent no.1's case that money was advanced to the respondent no.1 for undertaking stock market related transactions through her account – Trial court convicted the respondent no. 1 u/s. 138 since she failed to rebut the presumption – However, the first appellate court acquitted the respondent no. 1 holding that she rebutted the presumption – High Court upheld the same – Interference with:

Held: Not called for – As regards the sum involved in the cheques advanced in discharge of a legally enforceable debt or not, the complainant failed to show if any sum was advanced towards financial assistance – High Court found that the debt/liability, in discharge of which, according to the complainant, the cheques were issued, did not reflect in the complainant's balance-sheet – Other partners of the firm did not depose as prosecution witnesses to establish that the cheque-amounts were advanced to the respondent no. 1 as financial assistance – Respondent

* Author

no. 1 has put up a plausible defence as regards the reason for which the complainant's funds had come to her account – Both the appellate fora, on going through the evidence did not find existence of any "enforceable debt or other liability" – Thus, it cannot be held that the findings of the High Court and the first appellate court were perverse, or based on no evidence. [Paras 11, 12]

Case Law Cited

Oriental Bank of Commerce v. Prabodh Kumar Tewari [2022] 7 SCR 72 : **2022 INSC 832;** *Kalamani Tex and Another v. P. Balasubramanian* [2021] 1 SCR 668 : **(2021) 5 SCC 283;** *Shree Daneshwari Traders v. Sanjay Jain and Another* [2019] 11 SCR 370 : **(2019) 16 SCC 83;** *Uttam Ram v. Devinder Singh Hudan and Another* [2019] 13 SCR 425 : **(2019) 10 SCC 287;** *Rahul Sudhakar Anantwar v. Shivkumar Kanhiyalal Shrivastav* **(2019) 10 SCC 203;** *Kishan Rao v. Shankargouda* [2018] 5 SCR 69 : **(2018) 8 SCC 165;** *D.K. Chandel v Wockhardt Limited* **(2020) 13 SCC 471;** *Rohitbhai Jivanlal Patel v. State of Gujarat and Another* [2019] 5 SCR 417 : **(2019) 18 SCC 106;** *Basalingappa v. Mudibasappa* [2019] 6 SCR 555 : **(2019) 5 SCC 418;** *K. Subramani v. K. Damodara Naidu* [2014] 11 SCR 169 : **(2015) 1 SCC 99;** *Reverend Mother Marykutty v. Reni C. Kottaram and Another* [2012] 9 SCR 530 : **(2013) 1 SCC 327;** *Krishna Janardhan Bhat v. Dattatraya G. Hegde* [2008] 1 SCR 605 : **(2008) 4 SCC 54;** *John K. Abraham v. Simon C. Abraham and Another* [2013] 12 SCR 753 : **(2014) 2 SCC 236;** *Narendra Pratap Narain Singh v. State of U.P.* [1991] 2 SCR 88 : **(1991) 2 SCC 623 – referred to.**

List of Acts

Negotiable Instrument Act, 1881; Code of Criminal Procedure, 1973.

List of Keywords

Dishonour of cheque; Discharge of legally enforceable debt; Rebut the presumption; Raising of presumption; Insufficiency of funds; Enforceable debt or other liability.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Petition For Special Leave To Appeal (Criminal) No.5583 of 2022

From the Judgment and Order dated 06.12.2021 of the High Court at Calcutta in CRA No.424 of 2017

With

Special Leave Petition (Criminal) Nos. 5996, 5781 And 6046 of 2022

Appearances for Parties

Raju Ramchandran, Mrs. Aparajita Singh, Sr. Advs., Amit Kumar Singh, Avnish Pandey, Advs. for the Petitioner.

S. Nagamuthu, Sr. Adv., Mohit D. Ram, Ms. Monisha Handa, Rajul Shrivastav, Anubhav Sharma, Bhagirath N. Patel, Ms. Mantika Haryani, Ms. Muskan Surana, Ms. Astha Sharma, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Aniruddha Bose, J.

The common petitioner in these four petitions for special leave to appeal is a partnership firm dealing in iron and steel products. The petitioner has assailed a common judgment of the High Court of Judicature at Calcutta, by which the petitioner's appeal against acquittal of the first respondent in respect of offences under Section 138 of the Negotiable Instrument Act, 1881 ("1881 Act") has been dismissed. The petitioner, through its partner, Ramesh Kumar Gupta, had lodged four complaint cases under the aforesaid provision, after four cheques, alleged to have been issued by the accused/ respondent no.1, were dishonoured on the ground of insufficiency of funds. The petitioner claims that these cheques were issued between 07.11.2008 and 24.11.2008, drawn on the Axis Bank Limited, Burra Bazar in Kolkata. The relevant particulars regarding these four cheques, as per the petitioner's case, are reproduced in the following table:-

Cheque No.	Cheque Date	Amount	Date on which cheque was presented for encashment & was returned as dishonoured	Notice Date
713378	07.11.2008	2 Crore	04.05.2009	19.05.2009
713380	12.11.2008	2 Crore	04.05.2009	19.05.2009
713382	17.11.2008	2 Crore	04.05.2009	19.05.2009
713384	24.11.2008	1.75 Crore	04.05.2009	19.05.2009

2. Four independent complaint cases were lodged in the Court of the Metropolitan Magistrate, Kolkata by the petitioner and were registered as CC Nos.34905, 34906, 34907 and 34908 of 2009 respectively. The petitioner contended before the Trial Court that it had granted financial assistance to the accused/respondent no.1 and the said cheques were issued by the accused/respondent no.1 in discharge of her liability towards the petitioner. The petitioner/complainant had issued a statutory demand notice dated 04.05.2009, which was duly served upon the accused/respondent no. 1 on 20.05.2009, but the accused neither complied with the requisition as contained therein, nor gave any reply thereto. To further substantiate its case, the petitioner/complainant also relied upon the testimony of its partner, Ramesh Kumar Gupta.

3. The accused/respondent no.1 had taken the defence that the petitioner had not provided any financial assistance, but money was advanced to the accused/respondent no.1 for undertaking stock market related transactions through her account. She deposed as a defence witness and her specific stand in her examination-in-chief was that the complainant wanted to trade in the futures and options segment of the stock market and since the complainant did not want his family members to know about it, he had chosen to speculate through her account. Though the complainant was a partnership firm, by referring to the complainant using the pronoun “he” or “him”, she alluded to Ramesh Kumar Gupta only, with whom, the arrangements were given effect to. According to her, in this process, many cheques were exchanged to settle profit and loss and on good faith, according to her, the complainant also used to keep certain blank cheques signed by her which were to be deposited as and when the complainant had profit. It also transpired in course of

hearing before the Trial Court that there was an investigation by the Central Bureau of Investigation ("CBI"), in relation to which respondent no.1 had been chargesheeted and in a search and seizure action, some cheque-books of the respondent no.1 were also seized. As an explanation to her non-reply to the petitioner's demand notice, the respondent no.1 had submitted that she was expecting a child during that period and the child was born on 27.05.2009.

4. The defence case, in essence, was that the cheques, the dishonour of which is the subject of this proceeding, were neither issued nor handed over to the complainant, but these were illegally procured by the complainant/petitioner from the custody of the investigating agency i.e., CBI and were subsequently presented for encashment intentionally. The main case of the accused/respondent thus, was that there was no debt as such because the cheques were never issued in the first place. The Trial Court, by its judgment dated 29.06.2016 found that the impugned cheques were not part of the cheque book seized by CBI and these were issued in discharge of a legally enforceable debt. The accused/respondent no.1 came to be convicted by the Trial Court for commission of offence under Section 138 of the 1881 Act. The Trial Court found that she had failed to rebut the presumption contained in Section 118 read with Section 139 of the 1881 Act.

5. The First Appellate Court set aside this finding and acquitted the accused/respondent no.1. It found that the complainant/petitioner had failed to produce any document showing any loan transaction. In the opinion of the First Appellate Court, there was no proof of any loan transaction and the complainant/petitioner had also failed to prove handing over the cheques to it by the accused/respondent no.1. The First Appellate Court also took note of the fact that the signature of the accused/respondent and the figures showing the amount in the respective cheques were in different inks and held that the accused/respondent no.1 had successfully rebutted the presumption of guilt contained in aforesaid Sections of the 1881 Act.

6. The petitioner's appeal before the High Court against the judgment of acquittal was also dismissed. The High Court found that no valid documentary evidence could be produced by the complainant and the prosecution, for substantiating the existence of any enforceable debt or other liability on the part of the accused. The High Court,

on applying the principle of balance of probabilities, found that a plausible case had been made out by the defence, as regards non-existence of any legally enforceable debt or liability. The High Court observed in the judgment impugned herein that the balance-sheet and the accounts statement of the accused reflected a sorry state of affairs for the finances and thus, it concluded that the accused, within the prudence of a normal person, could not have undertaken such transactions for the petitioner/complainant without any consideration whatsoever.

7. On behalf of the complainant/petitioner, Mr. Raju Ramchandran, learned Senior Counsel appeared and argued before us that all the ingredients of Section 138 of the 1881 Act stood satisfied because signature of the accused, as also the receipt of money by the accused/respondent no.1 in her bank account remained undisputed. Further submission of Mr. Ramchandran was that once the aforesaid factors were established, the complainant was not required to prove its debt, in the manner it is required to be proved in a civil suit and that in a situation of this nature, the burden of proof shifted to the respondent/accused. It was for the accused to show the preponderance of probabilities that the cheque was not issued in discharge of a valid debt and mere denial of existence of debt would not be sufficient to rebut the presumption of guilt cast upon the accused. The authorities relied on for these propositions were:-

i. **Oriental Bank of Commerce -vs- Prabodh Kumar Tewari** [2022 INSC 832]

ii. **Kalamani Tex and Another -vs- P. Balasubramanian** [(2021) 5 SCC 283]

iii. **Shree Daneshwari Traders -vs- Sanjay Jain and Another** [(2019) 16 SCC 83]

iv. **Uttam Ram -vs- Devinder Singh Hudan and Another** [(2019) 10 SCC 287]

v. **Rahul Sudhakar Anantwar -vs- Shivkumar Kanhiyalal Shrivastav** [(2019) 10 SCC 203]

vi. **Kishan Rao -vs- Shankargouda** [(2018) 8 SCC 165].

8. Mr. Ramchandran has taken us through the judgment of conviction by the Trial Court and submitted that the issue regarding the said

cheques being procured from the custody of CBI, had not been dealt with extensively by the Appellate Courts and according to the cross-examination of the accused/respondent no.1, she had encashed several cheques falling within the sub-series of the cheque-book seized by the CBI. In view of this, the part of defence of the accused/respondent no.1 had failed. Referring to the judgment in the case of **D.K. Chandel -vs- Wockhardt Limited** [(2020) 13 SCC 471], he has further submitted that once the main ingredients of the offence are established, production of the books of accounts is not strictly necessary in a proceeding under the 1881 Act relating to dishonour of cheques. He has cited the case of **Rohitbhai Jivanlal Patel -vs- State of Gujarat and Another** [(2019) 18 SCC 106] to contend that factors relating to source of funds and other documentary evidence for advancing money are not relevant for consideration on the question of rebuttal of presumption by the accused.

9. Mr. S. Nagamuthu, learned Senior Counsel, appearing on behalf of the accused/respondent no.1, defended the judgment of the First Appellate Court, as also of the High Court. His submission was that the complainant/petitioner did not fulfil the requirement of being "a holder in due course", as no evidence was produced by the petitioner to show that the said cheques were issued in discharge of a legally enforceable debt and hence, he could not be a person who had, for due consideration, become the possessor of the cheques. He referred to the depositions made before the Trial Court, in support of his submission that the presumption under Section 139 read with Section 118 of the 1881 Act was not applicable in the case of the complainant/petitioner because such presumption stood effectively rebutted. He relied on the judgment of this Court in the cases:-

(i) **Basalingappa -vs- Mudibasappa** [(2019) 5 SCC 418],

(ii) **K. Subramani -vs- K. Damodara Naidu** [(2015) 1 SCC 99],

(iii) **Reverend Mother Marykutty -vs- Reni C. Kottaram and Another** [(2013) 1 SCC 327] and

(iv) **Krishna Janardhan Bhat v. Dattatraya G. Hegde** [(2008) 4 SCC 54].

10. He further argued that, in order to invoke the presumption under the aforesaid two provisions of 1881 Act, the jurisdictional facts had to be established by complainant/petitioner and any lacuna in the evidence

of the complainant would strike at the root of the complaint of this nature. He relied on the judgment in the case of **John K. Abraham -vs- Simon C. Abraham and Another** [(2014) 2 SCC 236].

11. We are dealing with a case where the First Appellate Court exercising its jurisdiction under Section 374(3) of Code of Criminal Procedure, 1973, ongoing through the analysis of evidence, acquitted the accused/respondent no.1. The acquittal was further upheld by the High Court in an appeal against acquittal under Section 378 of the 1973 Code. The whole question involved in this proceeding is as to whether the cheques were issued in discharge of a debt and if it was so, then whether the accused/respondent no.1 was able to rebut the presumption in terms of Section 118 read with Section 139 of the 1881 Act. In the light of the judgment of this Court in the case of **Narendra Pratap Narain Singh -vs- State of U.P.** [(1991) 2 SCC 623] the jurisdiction of this Court under Article 136 of the Constitution of India to interfere with concurrent findings of fact is not in question, when such findings are based on no evidence or are perverse. The question, we have to address thus, is as to whether the findings of the First Appellate Court and the High Court are on no evidence or perverse. Both these Courts have examined the evidence threadbare and in the opinion of these two fora, go against the complainant/ petitioner. On the question as to whether the sum involved in the cheques was advanced in discharge of a legally enforceable debt or not, the petitioner has failed to show if any sum was advanced towards financial assistance. The High Court found that the debt/ liability, in discharge of which, according to the petitioner, the cheques were issued, did not reflect in the petitioner's balance-sheet. The other partners of the firm did not depose as prosecution witnesses to establish that the cheque-amounts were advanced to the accused as financial assistance. The respondent no.1/accused has put up a plausible defence as regards the reason for which the petitioner's funds had come to her account. Both the appellate fora, on going through the evidence did not find existence of any "enforceable debt or other liability". This strikes at the root of the petitioner's case.

12. As the impugned decision is primarily based on considering the evidences produced by the respective parties, we do not consider it necessary to individually deal with the ratio of the respective decisions relied on by the learned senior counsel representing the parties. The principles emerging from these authorities have been

applied in the judgment of the High Court. In this judgment also, we have taken into consideration the positions of law reflected in these authorities. We are of the opinion that there is no perversity in the finding of the High Court, and prior to that, in the finding of the First Appellate Court, that went against the complainant/petitioner. It cannot be held that these findings were perverse, or based on no evidence. No point of law is involved in this set of cases, that would warrant our interference. We accordingly dismiss these petitions.

13. Pending application(s), if any, shall stand disposed of.

14. There shall be no order as to costs.

Headnotes prepared by: Nidhi Jain

Result of the case:
Petitions dismissed.