(2024) 12 KL CK 0056

High Court Of Kerala

Case No: Criminal Appeal No.923 Of 2015

Bindu Cheriyan		APPELLANT
	Vs	
State Of Kerala		RESPONDENT

Date of Decision: Dec. 12, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 313(1)(b), 378(4)
- Negotiable Instruments Act, 1881 - Section 20, 87, 138, 139

Hon'ble Judges: P.G. Ajithkumar, J

Bench: Single Bench

Advocate: R.Bindu, Prasanth M.P, K.G.Cleetus, Sanal P Raj

Final Decision: Dismissed

Judgement

P.G. Ajithkumar, J.

1. This is an appeal filed under Section 378(4) of the Code of Criminal Procedure, 1973 (Code).

2. The appellant filed C.C.No.524 of 2010 before the Judicial Magistrate of the First Class-VII, Ernakulam. Thes t1 respondent was the accused. The

learned Magistrate as per the judgment dated 22.01.2015 found the 1st respondent not guilty and acquitted. The said judgment is under challenge in

this appeal.

3. Following are the facts alleged in the complaint: The 1st respondent issued Ext.P2 cheque for making payment of Rs.3,02,075/- towards the value

of materials he purchased from the appellantâ€™s concern. The cheque, when presented for encashment, was returned unpaid for want of sufficient

funds in the account of the 1st respondent. Ext.P5 is the notice demanding payment. The 1st respondent did not make the payment. And, thereby he

has committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (NI Act).

4. The 1st respondent denied the accusation. Hence, PW1 was examined and Exts.P1 to P6 were marked on the side of the appellant. The 1st

respondent denied the incriminating circumstances appeared against him during examination under Section 313(1)(b) of the Code and submitted that

no amount was due from him. He maintained that more than Rs.12 lakhs was due to him from the appellant and the cheque, which was given for

cheque discounting was misused by him to file this complaint. A statement to that effect was submitted by him. Exts.D1 to D3 were marked on his

side. The trial court, after considering the evidence, held that the 1st respondent rebutted the presumption available under Section 139 of the NI Act in

respect of Ext.P2. He was accordingly acquitted. The said finding is under challenge in this appeal.

5. Heard the learned counsel for the appellant, the learned counsel for the 1st respondent and the learned Public Prosecutor.

6. Issuance of Ext.P2 cheque to the appellant is admitted by the 1st respondent. On behalf of the appellant her husband and power of attorney gave

evidence as PW1. The specific case in the complaint is that towards payment of the value of the materials purchased, Ext.P2 cheque was issued by

the 1st respondent. According to the learned counsel for the appellant having admitted execution and issuance of Ext.P2 cheque, a presumption under

Section 139 of the NI Act is available in his favour. Although the trial court held in that regard in favour of the appellant, it proceeded to hold that

Ext.P2 was not supported by consideration. In the view of the learned counsel for the appellant, the versions of PW1 that a demand draft for

Rs.9,99,000/- was given by him for the supply of goods and in respect of the value of undelivered portion of the goods, the 1st respondent had issued

Ext.P2 cheque was misinterpreted by the trial court. When there were running business transactions between the appellant and the 1st respondent,

such a finding should not have been entered into. Having admitted issuance of Ext.P2, it was the absolute burden of the 1st respondent with the aid of

sufficient evidence to rebut the presumption. He miserably failed to discharge that burden and therefore the finding of the trial court is untenable and

liable to be reversed. It is further submitted that the 1st respondent is a dealer in steel manufactured by various companies and there must be records

in order to prove his claim that more than Rs.12 lakhs was due to him and that Ext.P2 was issued for cheque discounting only. He, however, did not

produce any such document; instead, what he did was to call for documents from the appellant which were already destroyed being old ones. The said

aspect was highlighted and given undue emphasis and that resulted in a wrong finding that the presumption in respect of Ext.P2 stood rebutted.

7. The learned counsel for the 1st respondent, on the other hand, would submit that when the evidence tendered by the appellant was totally

contradictory to the averments in the complaint, the finding of the trial court cannot be said to be incorrect. It is further submitted that the accused

need not adduce evidence to rebut the presumption, he can depend on the evidence tendered by the prosecution or the circumstances arising

therefrom to substantiate his case. It is also contended that the appellant suppressed material facts and evaded producing documents despite

directions. That also counts against the appellantâ€™s case. When the appellant claimed that the cheque was issued for making payment of the value

of the goods sold to the 1st respondent, she could not avoid production of the documents concerning sale of such goods. The appellant being a

registered trader, such documents must have been in her possession, but failed to produce. The learned counsel for the 1st respondent accordingly

submitted that findings rendered by the trial court cannot be found fault with.

8. The Apex Court in Chandrappa and others v. State of Karnataka [(2007) 4 SCC 415] enunciated the following general principles regarding powers

of the Appellate CourtÂ whileÂ dealingÂ withÂ anÂ appealÂ againstÂ anÂ orderÂ of acquittal;

â€œ(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may

reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring

mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of

'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and

to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of

innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty

by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened

by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the

trial court.â€

9. In Shyam Babu v. State of U.P. [(2012) 8 SCC 651] the Apex Court held that it would not be possible for the appellate Court to interfere with the

order of acquittal passed by the trial Court without rendering a specific finding, namely, that the decision of the trial Court is perverse or unreasonable

resulting in miscarriage of justice. At the same time, it cannot be denied that the appellate Court, while entertaining an appeal against the judgment of

acquittal by the trial Court, is entitled to re-appreciate the evidence and come to an independent conclusion. While doing so, the appellate Court should

consider every material on record and the reasons given by the trial Court in support of its order of acquittal and should interfere only on being

satisfied that the view taken by the trial Court is perverse and unreasonable resulting in miscarriage of justice. It was further held that if two views are

possible on a set of evidence, then the Appellate Court need not substitute its own view in preference to the view of the trial Court which has

recorded an order of acquittal.

10. What the Apex Court held in Central Bureau of Investigation v. Shyam Bihari and others [(2023) 8 SCC 197] is that in an appeal against acquittal,

the power of the appellate court to re-appreciate evidence and come to its own conclusion is not circumscribed by any limitation. But it is equally

settled that the appellate court must not interfere with an order of acquittal merely because a contrary view is permissible, particularly, where the view

taken by the trial court is a plausible view based on proper appreciation of evidence and is not vitiated by ignorance/misreading of relevant evidence on

record.

11. The evidence that came on record in this case has to be considered in the light of the proposition of law laid down in the aforesaid decisions. In Bir

Singh v. Mukesh Kumar [(2019) 4 SCC 197] the Apex Court held that a meaningful reading of the provisions of the Negotiable Instruments Act

including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable

unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It was further

held that even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption

under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a

debt.

12. Reiterating the aforesaid principles, a three Judge Bench of the Apex Court in M/s.Kalamani Tex and another v. P.Balasubramanian [(2021) 5

SCC 283] held that once the signature of an accused on the cheque is established, the 'reverse onus' clauses become operative. In such a situation, the

obligation shifts upon the accused to discharge the presumption imposed upon him.

13. The question then is whether the 1st respondent succeeded in proving his case. The law in that regard has been laid down by the Apex Court in

Rajesh Jain v. Ajay Singh [2023 (6) KHC 391 (SC)]. It was held that Section 139 of the NI Act requires that the Court 'shall presume' the fact stated

therein, and hence it is obligatory on the court to raise this presumption in every case where the factual basis for the raising of the presumption had

been established. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary as is clear

from the use of the phrase 'unless the contrary is proved'.

14. How can the drawer of a cheque rebut the presumption under Section 139 of the NI Act has been explained by the Apex Court in Basalingappa v.

Mudibasappa [(2019) 5 SCC 418]. It was held,-

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(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting

the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in

order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by

reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive

burden.

(v)It is not necessary for the accused to come in the witness box to support his defence.

15. During cross-examination, PW1 deposed that he gave a demand draft for Rs.9,99,000/- towards the cost of the goods agreed to be delivered by

the 1st respondent. In order to pay back value of the undelivered goods Ext. P2 cheque was given. He further deposed that goods were used to be

purchased from the concern of the 1st respondent to his shop, Cear India. The said versions stand in total contradiction to the case asserted in the

complaint.

16. It has not been stated in the complaint that there were business transactions between the appellant and the 1st respondent. PW1, however, stated

before the court regarding the purchase of articles from the 1st respondent to the appellantâ€™s concern. Ext.D3 is the reply sent by the 1st

respondent. The specific case in it was that no amount was due from him, whereas more than Rs.12,00,000/- was due from the appellant to the 1st

respondent. The business relationship between the parties and why Ext. P2 given were also stated therein. In the light of the said specific contentions

set out by the 1st respondent, the appellant had the obligation to produce documents substantiating sale of articles to the 1st respondent, price of which

was said to be the consideration for Ext.P2 cheque. She did not. Even though the 1st respondent filed a petition calling upon the appellant to produce

such documents, she evaded saying that such documents were already destroyed.

17. Having asserted in the complaint the nature of consideration, deviation from it while giving evidence makes the consideration underlying Ext.P2

doubtful. Not only that the assertion in the complaint and version of PW1 in court concerning the consideration are mutually destructive even. In the

above circumstances, the view taken by the trial court that the presumption under Section 139 of the NI Act available in respect of Ext.P2 stood

rebutted, cannot be said to be incorrect. The finding resulting in acquittal of the 1st respondent cannot therefore be said to be perverse or totally

incorrect.

Hence, the appeal deserves only to be dismissed.

Accordingly, the appeal is dismissed.