

(2004) 07 JH CK 0031

Jharkhand High Court**Case No:** Acquittal Appeal No. 13 of 2004

Bharat Sales Corporation

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: July 27, 2004**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 378
- Negotiable Instruments Act, 1881 (NI) - Section 138, 139

Citation: (2004) CriLJ 4569 : (2004) AIR Jhar HCR 2755 : (2005) 2 ICC 257 : (2005) 1 AllCriLR 473 : (2005) 1 ALD(Cri) 41**Hon'ble Judges:** S.J. Mukhopadhyaya, J; Narendranath Tiwari, J**Bench:** Division Bench**Advocate:** Ananda Sen, for the Appellant; R.S. Muzumdar and Manjushri Patra, for the Respondent**Final Decision:** Allowed

Judgement

1. This is the complainant's appeal on special leave granted by this Court under the provisions of Section 378(4) of the Code of Criminal Procedure directed against the judgment of acquittal passed by the Court below in C/1 Case No. 705/98 (T.R. 751/A/03).

2. The case of the complainant appellant was that it is partnership firm dealing in business of sale of building materials, namely cement, iron rods etc. having its place of business at Cinema Road, Parsudih, Jamshedpur and the accused is a supplier, of such building materials. According to the complainant the respondent, opposite party No. 2 used to purchase the building materials regularly from the complainant. The price, on purchases, were sometime paid in cash and sometime purchases used to be on credit. In course of time sum of Rs. 2,36,522.68 had become due against the accused respondent No. 2 towards prices of the building materials supplied on credit by the appellant. The said outstanding dues was duly acknowledged by the

accused, respondent No. 2. The appellant demanded the said dues from the respondent No. 2 and in response thereof an account payee cheque for the said amount bearing No. 049642 dated 9-9-1998 drawn on Central Bank, Sakchi Branch, Jamshedpur was issued for discharge of the said liability fully and finally. The appellant on receiving the cheque presented the same to its banker, Canara Bank, Khasmahal Branch, Jamshedpur to collect the amount but after sometime the said cheque was returned unpaid with a memo dated 10-9-1998 of the drawee Bank stating reason as "Insufficient Fund" in the account (Ext. 6). The appellant thereafter sent registered notice dated 17-9-1998 as required under proviso (b) of Section 138 of the Negotiable Instruments Act to the respondent No. 2 through its lawyer demanding payment of the said amount (Ext. 8). The said notice was duly received by the accused but instead of making payment of the amount of cheque, the accused respondent No. 2 sent an evasive reply dated 7-10-1998 through his lawyer. Hence, a criminal complaint u/s 138 of the Negotiable Instruments Act was filed in the Court of the Chief Judicial Magistrate, Jamshedpur being C-1 Case No. 705 of 1998, in which ultimately the impugned order of acquittal was passed by the said Judicial Magistrate.

3. In the Court below, the complainant adduced documentary and oral evidences to establish his case. He produced several documents which have been marked as Exhibits including money receipt of final payment (Ext. 3), cheque return memo (Ext. 6), carbon copy of notice dated 17-9-1998 (Ext. 8), Registration slip (Ext. 9), number of challans (Ext. 10 to 10/40). The complainant also examined altogether six witnesses P.W. 1 Prabhakar Jha in paragraphs 1, 2, 3, 4, 5, 6 and 7, P.W. 2 Murlidhar Prasad Vernwal in paras 1, 2, 3, P.W.3-Nawal Kishore Gupta, Bank Manager, Central Bank of India, Sakchi Branch in paras 2, 3, P.W. 4-Madhu Sudan Jairam Logbate Manager, Canara Bank, Khas Mahal Branch in paras 2,3,4 in the respective statements have fully supported the case of the complainant . P.W.6 Din Dayal Prasad, partner of the complainant M/s. Bharat Sales Corporation fully proved his complaint. However, the Court below by the impugned order acquitted the accused respondent No. 2 mentioning therein that there is absence of substantial evidence for proving the guilt of the accused.

4. Aggrieved by the order of acquittal, the complainant has filed this appeal. The complainant in this appeal has made out the grounds that the Court below has failed to take into consideration the material evidences, documentary and oral inasmuch, as, no reason has been assigned for discarding the cogent and legal evidences. Further that there is presumption u/s 139 of the Negotiable Instruments Act in favour of the holder of the cheque and the onus was on the accused to prove his innocence. The appellant has further taken grounds that the judgment is cryptic, non speaking and there is absence of valid reasons for acquittal of the accused.

5. Mr. A. Sen, learned counsel appearing on behalf of the appellant submitted before us that from the bare perusal of the order under appeal it would be evident

that there is absolutely no discussion of the evidences and no reason has been assigned for discarding the material documentary and oral evidence adduced on behalf of the complainant. According to him there are sufficient material on record to prove the guilt of the accused. Mr. A . Sen drew our attention on the provision of Sections 138 and 139 of the Negotiable Instruments Act 1881 and submitted that there is presumption in law that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge in whole or in part of any debt or other liability unless the contrary is proved. According to the learned counsel the accused has thus to prove his innocence and there is absolutely not an iota of evidence on record to rebut the said legal presumption u/s 138 of the said Act. And that being the position it was obligatory on the Court to presume and draw the statutory conclusion against the accused for convicting him u/s 138 of the Negotiable Instruments Act.

6. Mr. Sen further submitted that there are material documentary as well as oral evidences on record but the Court below was not considered the same and no reason has been assigned for discarding the weighty oral as well as documentary evidences adduced on behalf of the complainant appellant. In that view, Mr. Sen urged that the impugned order of acquittal passed by the Court below is wholly perverse and illegal and the same is liable to be set aside .

7. Mr. R.S. Mazumdar learned counsel appearing on behalf of respondent No. 2, on the other hand, submitted that no such meticulous discussion of the evidences is required when the witnesses have been referred to at places in the judgment. According to him there is no valid proof of any liability and as such respondent No. 2 cannot be held guilty for an offence u/s 138 of the said Act. According to Mr. Mazumdar, the order should be read in totality and the same should not be disturbed only for some irregularity which according, to him does not go to its root and does not vitiate the order.

8. Having heard the learned counsel for the parties and perused the record, we find that there are large numbers of documentary evidences exhibited on behalf of the complainant appellant, but there is not even a whisper about the said evidences in the judgment of the Court below. We further find that although there is reference of the names of the witnesses examined on behalf of the complainant yet there is absolutely no discussion about the same. No reason has been assigned by the Court below for discarding the said oral and documentary evidences. It is not clear from the judgment that the Court below has applied its judicial mind on the said evidences and materials on record in drawing its conclusion. In [State of U.P. Vs. Anil Singh](#), the Supreme Court has observed "it is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."

9. In view of the provisions under Sections 138 and 139 of the Negotiable Instruments Act onus was on the accused to prove his innocence. The legal presumptions under Sections 138 and 139 of the Act prevails in absence of any evidence to the contrary. But the Court below has failed to take notice of the same.

10. We therefore, find much substance in the argument of Mr. Sen. In our considered view impugned order of the Court below is patently illegal and perverse and unsustainable in law. Although, normally order of acquittal is not interfered with but the impugned order being wholly perverse and manifestly illegal, the same warrants interference by this Court. We, therefore, allow this appeal and set aside the impugned order of the Court below. The case is remitted back to the Court below for reconsideration of all the materials and evidenced on record as well as the provisions of law and to dispose of the same in accordance with law. Let the records be transmitted to the Court below immediately.