

## **M/s Goyal Enterprises Vs The State of Jharkhand and Ishta Narayan Mihsra**

**Court:** Jharkhand High Court

**Date of Decision:** Dec. 16, 2011

**Acts Referred:** Negotiable Instruments Act, 1881 (NI) – Section 118, 138, 139, 141(2), 87

**Citation:** (2012) 3 Crimes 567

**Hon'ble Judges:** Harish Chandra Mishra, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### **Judgement**

H.C. Mishra

1. By Court: Heard learned counsels for both the sides.

2, This appeal is directed against the Judgment of acquittal passed by Shri S.K. Dubey, Judicial Magistrate, Jamshedpur, on 13.02.2006, in a

Complaint case, being C/1 case No. 166 of 2001, T.R. No. -514 of 2006, whereby, in the complaint case filed by the appellant complainant for

the offence u/s 138 of the Negotiable Instrument Act. (hereinafter referred to as "the N.I. Act"), the Court below upon adjudication has acquitted

the respondent accused, finding him not guilty for the offence charged.

3. The case of the appellant complainant, as made out in the complaint petition filed by the complainant M/s Goyal Enterprises, is that the

complainant is engaged in business of steel materials and it supplied the steel materials on credit to M/s Everest Electrical & Engineering Co. Pvt.

Ltd. and pursuant thereto, the accused Ishta Narayan Mishra who happened to be the Managing Director of the said company issued two account

payee cheques, bearing cheques Nos.0956557 and 0956558 for Rs. 82,155/- and Rs. 1,31,078/- respectively. The amount, in total, comes to

Rs. 2,13,233/-. Both the cheques were issued on 15.9.2000 and were drawn upon the State Bank of India, S.S.I. Adityapur Branch,

Jamshedpur. The said cheques were deposited in the Bank on 10.1.2001, but the same were dishonoured and returned back with the Bank

Return Memo, giving reason for dishonour of cheques as ""Exceeds Arrangements"". Subsequent thereto on 16.1.2011, the complainant served the

legal notice for demand upon the accused, but as the amount was not paid to the complainant,- the complaint was filed u/s 138 of the N.I. Act.

4. In course of trial in the Court below, the complainant has examined two witnesses, who were CW-1 Hardeep Singh, who was authorized by the

said M/s Goyal Enterprises to file the case against the accused and CW-2 Somnath Ghosh, who was a Bank official.

5. CW - 1 Hardeep Singh has deposed about issuance of cheques by the respondent accused and depositing the same in the Bank. The cheques

were proved in the Court as Exhibits 1 and 1/2. Though he has stated that the cheques were returned with the Bank Return Memo, but the same

were not marked as exhibits. He has also stated about the legal notice, which was sent to the respondent accused and the same was proved as

Exhibit 2. The acknowledgments of the legal notice were marked as Exhibits 3/1 and 3/2. In his cross examination on behalf of the defence

regarding the legal notice, he has admitted that the signature on the acknowledgment is not of the accused. In his cross examination about the

cheques, he has denied the suggestion that there were any interpolation in the dates on the cheques.

6. At this stage, it may be stated that from bare perusal of the cheques which have been proved as Exhibits 1/1 and 1/2, it is apparent that there

are overwritings on the dates of both the cheques and it clearly appears that the date "15.4.2000" has been made "15.9.2000" by overwriting the

figure "4" to read as "9" in both the cheques. There is no signature or endorsement of the drawer of the cheques on the overwriting on either of

these cheques.

7. Learned counsel for the appellant complainant has submitted that the Judgment passed by the Court below is absolutely illegal, in as much as no

reasoning has been given by the Court, rather the Court has given its findings though under the heading "reasons", but without supported by any

reasoning, and as such, the Judgment is fit to be set-aside. Learned counsel also submitted that all the statutory requirements were completed

before filing the complaint case, in as much as, the cheques were deposited in the Bank within the due date and upon getting the information about

the dishonour of the cheques, the notice was given to the respondent accused within the prescribed period and when no payment was made by the

accused respondent, the complaint was filed within the period prescribed by the N.I. Act.

8. Learned counsel has, accordingly, submitted that there is presumption against the accused under Sections 118 and 139 of the N.I. Act, but the

accused has failed to rebut the said presumption and no evidence was adduced by the defence in rebuttal of the said presumption. In this

connection, learned counsel placed reliance upon a decision of this Court in the case of M/s Bharat Safes Corporation Vs. State of Jharkhand &

another, reported in 2004 (4) JLJR 317, wherein it has been held that legal presumptions under sections 138 and 139 prevail in absence of any

evidence to the contrary and in view of the fact that no reason was assigned by the Court below for discarding the oral and documentary evidence

adduced by the complainant in the said case, this Court set-aside the order and remitted back the matter to the Court below for reconsideration of

the materials and evidence on record. Learned counsel also placed reliance upon the decision of the Hon"ble Supreme Court of India in the case

of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & anr., reported in [2005 (4) East Cr. C. 98 (SC)], wherein it has been held that where the

cheque has bounced, the signatory of the bounced cheque is clearly responsible for the incriminating act and he must bear the liability u/s 141(2) of

the N.I. Act. Learned counsel also placed reliance upon the decision of the-Hon"ble. Supreme Court of India in the case of Veera Exports Vs. T.

Kalavathy, reported in (2002) 1 SSC 97, wherein it has been held that there is no bar against voluntary revalidation of a negotiable instrument

(including a cheque) by the drawer after the expiry of its validity period. Placing reliance upon this decision, learned counsel submitted that even

though there was overwriting on the dates of the cheques, it shall only amount to revalidating the cheques.

9. In the case of Veera Exports (supra) the change of the date on the cheque was under endorsement of the drawer of the cheque, but in the

present case there is no endorsement or signature of the drawer of the cheques under the overwritings on the dates. This apart, it is not at all the

case of the complainant that after the expiry of the cheques, the same were revalidated by, or with the consent of the drawer. Rather, the specific

case of the complainant is that the cheques were issued on 15.9.2000 itself. As such, this decision is not at all applicable to the facts of this case.

10. Learned counsel for the respondent accused on the other hand has argued that there are interpolations in the cheques and accordingly the

cheques had become void in view of Section 87 of the N.I. Act, which says that any material alteration of negotiable instrument renders the same

void. Learned counsel accordingly submitted that the respondent accused could not have been tried for the offence by the Court below in view of

the fact that the cheques were void and the Court below has rightly acquitted the respondent accused, though on other valid grounds. As such,

there is no illegality in the Judgment of acquittal passed by the Court below. Learned counsel also pointed out that Return Memo had not been

proved in this case. He further pointed out that the notice was not served upon the respondent accused and even CW-1 Hardeep Singh has

admitted in his cross-examination that the signature on the acknowledgement is not of the accused. Learned counsel, accordingly, submitted that

the Judgment of acquittal passed by the Court below cannot be interfered with.

11. After hearing learned counsels for both the sides and upon going through the materials on record, I find that the cheques which have been

proved in this case clearly show that there are material alterations in the same in as much as, the date "15.4.2000" in both the cheques have been

altered as "15.9.2000" and there is no endorsement or signature thereon of the drawer of the cheques. Section 87 of the N.I. Act reads as under:

87. Effect of material alteration. - Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto

at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original

parties;

12. Section 87 of the N.I. Act is a mandatory provision and in this view of the matter, the cheques which were materially altered before production

in the Court and without any evidence to the effect that how the said alterations in the cheques were made, were absolutely void and the accused

could not have been found guilty of the offence u/s 138 of the N.I. Act on the basis of the said void cheques. In view of this finding, the other

arguments made by the learned counsel for the appellant now remain only of academic importance, which need no further discussion in the present

case.

13. In view of the aforementioned discussions, I find and hold that the respondent accused could not have been found guilty of the offence u/s 138

of the N.I. Act on the basis of the said void cheques which have been produced in the Court below and marked Exhibits 1/1 and 1/2, there being

material alteration in the dates of the cheques.

14. Accordingly I do not find any material worth interference with the acquittal of the respondent accused. There is no merit in this appeal, which,

accordingly, fails and the same is, hereby, dismissed.