
Pavan Singh Chauhan Vs Vishnu Singh Chauhan

MCRC-13324-2009

Court: Madhya Pradesh High Court

Date of Decision: July 3, 2015

Acts Referred:

Negotiable Instruments Act, 1881 (NI) - Section 138, 138(b), 139

Hon'ble Judges: N.K. Gupta, J

Bench: Single Bench

Advocate: K.D. Singh, for the Appellant; A.D. Mishra, Advocates for the Respondent

Final Decision: Dismissed

Judgement

N.K. Gupta, J

Heard the learned counsel for the parties.

2. The applicant has moved the present application for grant of leave to appeal relating to the judgment dated 7.4.2008 passed by the Additional

Chief Judicial Magistrate, Sohagpur in criminal case no. 4/06, whereby the respondent has been acquitted from the charge of offence under

Section 138 of the Negotiable Instrument Act (hereinafter referred as "the N.I. Act").

3. Facts of the case in short are that the applicant had filed a criminal complaint against the respondent before the trial Court on the basis of a

cheque dated 25.2.2005 issued in favour of the applicant for payment of Rs. 50,000/-. According to the complainant, the cheque was deposited

before the Bank at Pipariya but cheque was dishonoured because there was an instruction from the side of respondent that payment of that cheque

be stopped. Thereafter, again the cheque was deposited in the Bank at Sohagpur but, again it was returned without its payment. A notice dated

9.8.2005 was given to the respondent, which was served upon the respondent on 10.8.2005 but no payment was given by the respondent after

demand and therefore, a criminal complaint was filed.

4. The respondent abjured his guilt. He took a plea that there was no transaction of the respondent with the applicant and therefore, no payment

was due towards the applicant. Actually, the cheque was given without mentioning the name of anyone, whereas it was to be given to one

Manoharlal and cheque was sent by driver Shravan Kumar Patel but ultimately, Shravan Patel delivered that cheque to a person not known to him

and therefore, a direction of stoppage of payment was given by the respondent. In defence, Vishnu Chouhan (DW-1) and Manohar Lal (DW-2)

were examined. The trial Court after considering the evidence adduced by both the parties, acquitted the respondent.

5. After considering the submissions made by learned counsel for the parties and looking to the facts and circumstances of the case, the learned

counsel for the applicant has read the para 4 of the notice Ex.P/8 in which it is mentioned that the cheque was issued for payment of Rs.50,000/-.

However, if the entire notice Ex.P/8 is perused then, it is not pleaded by the applicant that he demanded a sum of Rs.50,000/- after dishonouring

of the cheque and therefore, the requirement of the Provision under Section 138(b) of the N.I. Act has not been complied by the applicant and

since no demand was made by the applicant in the notice then, it was not a demand notice as required under Section 138(b) of the N.I. Act,

therefore, no complaint under Section 138 of the N.I. Act could be filed.

6. It is also submitted that the cheque was sent to the respondent on a correct address and it was received by one Ramesh Chandra. Ramesh

Chandra was representative of Chetak Enterprises and therefore, it was submitted by the learned counsel for the applicant that notice was served

upon the respondent. In this connection, learned counsel for the applicant has placed his reliance upon the order passed by the Hon"ble Apex

Court in the case of Indo Automobiles Vs. Jai Durga Enterprises and Others, AIR 2009 SC 386 : (2008) 4 BC 531 : (2009) CriLJ 326 : (2008)

4 CTC 190 : (2008) 10 SCALE 373 : (2008) 8 SCC 529 , in which it is held that if a notice has been given on the correct address then, it shall be

presumed that the service has been made effective. If the acknowledgment slip Ex.P/10 is perused then, notice was sent to the respondent with the

address:-

C/o Chetak Enterprises,

Commissioner Colony,

Babai Road, Hoshangabad

7. That could be the address of Chetak Enterprises but it was not correct address of the respondent, everywhere it was mentioned that he was a

resident of Pipariya. Under these circumstances, it was for the applicant to prove that the respondent was an employee of Chetak Enterprises and

his letter could be sent through Chetak Enterprises. Pawan Chouhan (PW-1) could not show any document so that it can be presumed that the

address given on acknowledgment Ex.P/10 was of the respondent and notice was sent to the correct address. If Ramesh Chandra was an

employee of Chetak Enterprises then, it cannot be said that he was representative of the respondent.

8. Even Chetak Enterprises was not representative of the respondent and therefore, if the notice was sent on the address of Chetak Enterprises,

Hoshangabad then, it cannot be said that notice was sent on the correct address of the respondent. The applicant has received a cheque of the

respondent and he could get a knowledge about the correct address of the respondent from the bank, whose cheque was given. In the present

case, notice was not sent on the correct address, the law laid down by the Apex Court in the case of Indo Automobiles (supra) cannot be applied

and therefore, the applicant could not prove that the notice of demand was given to the respondent therefore, the complaint filed by the applicant

against the respondent under Section 138 of the N.I. Act was not maintainable.

9. Also, the respondent took a plea that a cheque of Rs.50,000/- bearing no name of drawee was given to one Manohar Lal for his payment and

when it was found that the cheque was missed then, the respondent directed the concerned Bank authority to stop the payment of cheque. In this

connection, the respondent Vishnu Singh Chouhan (DW-1) himself examined as a witness and also Manohar Lal (DW-2) was examined.

According to the bank reports Exs.P/3 & P/6, the Bank has informed to the applicant that the respondent has directed to stop the payment of

cheque and therefore, after considering the evidence adduced by the respondent, it was the duty of the applicant to prove that there was a

transaction between the applicant and the respondent and he supplied some sand to the respondent. Sand is to be obtained from mines and a

transit pass is to be obtained from the lease contractor. The applicant could not file such counter transit coupons that he obtained some sand from

the mine and supplied to the respondent. However, the complainant/applicant could not show any document so that his testimony can be believable

that he supplied some sand to the respondent and payment of that sand was due from the respondent.

10. Learned counsel for the applicant has submitted that a presumption under Section 139 of the N.I. Act may be drawn in favour of the applicant.

In this connection, a judgment passed by the Hon"ble Apex Court in the case of Rangappa Vs. Sri Mohan, AIR 2010 SC 1898 : (2010) 2 BC

693 : (2010) CriLJ 2871 : (2010) 5 JT 259 : (2010) 5 SCALE 340 : (2010) 11 SCC 441 : (2011) 1 SCC(Cri) 184 : (2010) 100 SCL 389 :

(2010) AIRSCW 2946 : (2010) AIRSCW 6043 : (2011) AIRSCW 404 : (2010) 4 Supreme 169 : (2010) 5 Supreme 206 has been relied upon,

in which it is held that the presumption under Section 139 of the N.I. Act shall be taken in favour of the person, who received the cheque and it is

for the opposite party to rebut the presumption that there was no legally enforceable debt or liability was there upon the opposite party. In the

present case, name of the applicant was not mentioned in the same ink by which the respondent appended his signature on the cheque and

therefore, prima facie, it cannot be said that the cheque was issued to the applicant. Secondly, the respondent has examined himself as well as

Manohar Lal to show that the cheque was issued to Manohar Lal without mentioning his name and it was missing. If the cheque was issued in

favour of the applicant, then he could file the various documents relating to supply of sand to the respondent. Hence, it would be apparent that the

respondent has discharged his liabilities and the presumption under Section 139 of the N.I. Act was duly rebutted. Under these circumstances, the

applicant cannot get any advantage of the judgment passed in the case of Rangappa (supra).

11. On the basis of aforesaid discussion, it would be apparent that there is no illegality or perversity visible in the impugned judgment. There is no

ground to grant leave to appeal in favour of the applicant. Hence, it is not a case in which leave may be granted.

12. Consequently, the present application for grant of leave to appeal filed by the applicant Pavan Singh Chauhan is hereby dismissed.

13. Copy of the order be sent to the Courts below alongwith the records for information.