

HIGH COURT OF MADHYA PRADESH AT JABALPUR

CRR No. 4148/2018

Imran Khan & Anr.

Vs.

Mohd. Ikram

[Single Bench : Hon'ble Justice Smt. Anjali Palo, Judge]

Shri Gulab Singh, learned counsel for the applicants.

Shri Ankit Saxena, learned counsel for the respondent.

**ORDER
(16/01/2019)**

This criminal revision under Section 397 r/w Section 401 of Cr.P.C. has been filed by the accused-applicants being aggrieved by the judgment dated 07.07.2018 passed by the Special Sessions Judge, Bhopal District Bhopal in CRA No. 661/2015 whereby the Court below has remanded the case to the JMFC, Bhopal for taking evidence to prove the return memo Ex. P/3.

2. It is not in dispute that Cheque No. 731089 dated 15.06.2012 issued by the applicants was dishonored due to “stop payment” by the applicant. It is also not in dispute that, notice dated 06.08.2012 has been received by the applicants for the offence punishable under Section 138 of Negotiable Instruments Act.

3. Respondent's case is that he is the owner of truck and

heavy vehicles and leased them on rent. Some trucks are also attached with companies. In February, 2011, applicant No. 1 came to the respondent's house and proposed him that a petrol pump is allotted to him. But due to shortage of funds, he proposed to make respondent to be a partner for investment. Respondent denied to become a partner, hence, applicant No. 1 requested for some money from respondent to purchase petrol and diesel. Thereafter, respondent gave the amount via cheque directly through B&C Company. Respondent in his complaint further claimed that he advanced loan from others and gave Rs. 5,50,000/- through RTGS and thereafter through cheques and lastly on 23.08.2011 an amount of Rs. 3,00,000/- as cash and Rs. 3,61,710/- as cash on 15.09.2011 to the applicant. He further claimed that from 15.04.2011 to 15.09.2011, he gave Rs. 18 lakhs to the applicant. Rs. 3 lakhs have been returned by the applicant to the respondent through cheque on 28.12.2011, thereafter he assured to return the balance amount till March 2012. In the month of March, 2012, respondent approached the applicant for return of the balance amount of Rs. 15 lakhs. Applicant assured him and gave cheque No. 731089 dated 15.06.2012 of Rs. 15 lakhs drawn on Bank of India, Awadhपुरi Branch bearing his signature and seal of his company. The cheque was dishonored due to "stop payment" instructed by the applicant. Thereafter, respondent served demand notice through his advocate and on receipt of the said notice, applicant replied that he has not taken any

loan from the respondent, hence, he has stopped the payment of the questioned cheque.

4. On the complaint filed by the respondent and on production of evidence, learned trial Court convicted the applicant under Section 138 of Negotiable Instruments Act and sentenced him to undergo RI for 1 year with cost of Rs. 18,50,000/- to be paid to the respondent.

5. Applicant challenged the aforesaid finding in criminal appeal before the Learned Special Session Judge SC/ST (Prevention of Atrocities) Act, Bhopal wherein the appeal filed by the applicant was allowed after quashing the judgment passed by the Court of Judicial Magistrate First Class the appellate Court wrongly remanded the case to the trial Court with the direction that the complainant will prove his case with respect of bank's return memo.

6. Applicants challenged the aforesaid finding on the ground that the learned Appellate Court wrongly gave opportunity to the complainant to fill the lacunae by permitting further evidence. For that, benefit of doubt ought to have been given in favour of the applicant. Once, Ex. P/3 is not proved, the learned Appellate Court should have passed an order of acquittal in favour of the applicant because the return memo issued by the bank in respect of dishonored cheque did not bear the seal of the bank and has not complied with the mandatory provisions of Negotiable Instruments Act, 1881.

7. Heard learned counsel for the parties. Perused the record.

8. This Court finds that the issue raised by the applicant is directly linked with the provisions of Section 146 of the Negotiable Instruments Act, 1881 which reads as under:

“146. Bank’s slip prima facie evidence of certain facts. - The Court shall, in respect of every proceeding under this Chapter, or production of bank’s slip or memo having thereon the official mark denoting that the cheque has been dishonored, presume the fact of dishonored of such cheque, unless and until such fact is disproved.”

9. Section 114(e) of the Indian Evidence Act further provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

10. Illustration (e) of Section 114 further provides that the Court may presume that the judicial and official acts have been regularly performed. In case of **Jagjit Singh vs. State of Haryana, AIR 2007 SC 590**, the Hon’ble Supreme Court held that ordinarily, the adverse inference can be drawn in respect of allegations not traversed. But there is no general rule that adverse inference must always be drawn, whatever the facts and circumstances may be.

11. In case of **Shobha Hymavathi Devi vs. Setti Gangadhara Swami, AIR 2005 SC 800**, the Hon’ble Supreme Court further held that such type of presumption is rebuttable. If there is any such type of circumstance, weakening such presumption, it cannot be ignored by the

Court.

12. In the present case, in the questioned document, endorsement memo (Ex. P/2), the seal of bank is not affixed by the bank. The learned Appellate Court below held that in the absence of evidence of authorised officer from bank, Ex. P/2 and Ex. P/3 cheque return memo do not have evidentiary value. On the other hand, both the Courts below found that disputed cheque Ex.P/1 was issued by applicant No. 1 himself. It is admitted that the aforesaid cheque was signed by the applicant.

13. Under Section 139 of Negotiable Instruments Act, 1881, there is sufficient ground to infer that the cheque was issued in favour of the respondent from the account for discharge in whole or in part, of any debt or other liability. Undisputedly, the disputed cheques are dishonored on account of stop payment.

14. In case of **Rangappa vs. Mohan, AIR 2010 SC 1898**, the Hon'ble Supreme Court has held that Section 138 of Act can indeed be attracted when a cheque is dishonored on account of "stop payment" instructions sent by the accused to his bank in respect post-dated cheque, irrespective of insufficiency of funds in the account.

15. After considering the aforesaid facts, in the opinion of this Court, remand of case and giving opportunity to the complainant to produce evidence to prove Ex. P/3 would not cause prejudice in any way to the applicant. The lower Court also gave an opportunity to the

applicant to cross-examine the witness. He has further opportunity to produce evidence for rebutting the presumptions under Section 114(e) of the Indian Evidence Act and Section 139 of the Negotiable Instrument Act. On the aforesaid reasons, this Court is not inclined to interfere with the judgment.

16. Accordingly, this criminal revision stands **dismissed**.

(Smt. Anjali Palo)
Judge