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CRA-7768-2019

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 15th OF JANUARY, 2026CRIMINAL APPEAL No. 7768 of 2019*RAMESH KUMAR MEHRA**Versus**ANAND MALVIYA*

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Appearance:

*Shri Yash Tiwari - Advocate for appellant.**Shri Rahul Patel - Advocate for respondent.*
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ORDER

With the consent of learned counsel for the parties, this appeal is heard finally.

2. The present appeal has been filed by the appellant (hereinafter referred to as the 'complainant') under Section 378(4) of Cr.P.C. being aggrieved by the judgment dated 28.09.2018 passed by the 13th Additional Sessions Judge, Bhopal, District Bhopal in CRA No.381/2018 reversing the judgment dated 11.05.2018 of conviction and sentence passed in RT No.505/2016 by the JMFC, Bhopal, District Bhopal, whereby the respondent (hereinafter referred to as the 'accused') had been convicted under Section 138 of N.I. Act and sentenced to undergo six months RI and to pay Rs.2,40,000/- to the complainant, failing which to undergo further three months RI.

3. The prosecution case, in brief, is that there is a friendly relationship between the complainant and the accused and for his personal needs, the accused had asked for a loan of Rs.2,00,000/- from the complainant. Keeping



in view the friendly relationship, the accused gave the amount of Rs.2,00,000/- to the accused on 24.04.2015 as a loan. While giving the said amount, the accused had told the complainant that he would return the said amount to him within 06 months. A loan agreement was executed in respect of the said loan dated 24.04.2015. When the accused did not return the said amount within 06 months, on making a demand by the complainant, the accused issued two cheques, bearing numbers 039296 and 039297, dated September 24, 2015 and October 24, 2015, respectively, for an amount of Rs.1,00,000/- each, drawn on State Bank of Bikaner and Jaipur, Kolar Branch, Bhopal, in favor of the complainant. When the complainant presented these cheques to his bank, they were returned unpaid on November 25, 2015, with the remark "insufficient funds." The complainant contacted the accused on phone and informed him of the same, the accused started verbally abusing him and refused to return the money. Consequently, on December 10, 2015, the complainant, through his advocate, sent a legal notice to the accused via registered post with acknowledgment due, demanding the cheque amount. The accused failed to return the legally recoverable amount of debt within the stipulated time period, and knowing that his account had insufficient funds, he intentionally issued cheques from an account with insufficient funds to the complainant. Therefore, the complainant has filed a complaint against the accused in court.

4. The accused/respondent has denied committing the alleged offence and has expressed his intention to defend himself.

5. Statement of the witness/complainant Ramesh Kumar Mehra (PW-1)



has been recorded and the documents Exs.P/1 to P/8 have been exhibited.

6. The learned trial Court, after hearing the parties and considering the material on record, vide judgment dated 11.05.2018 convicted the accused under Sections 138 of N.I. Act and sentenced him to undergo R.I. for six months and to pay Rs.2,40,000/- to the complainant under Section 357(3) of Cr.P.C. with default stipulation. In addition, the accused was further directed to pay Rs.10,000/- towards expenses to the complainant under the provision of Section 359 of Cr.P.C.

7. Being aggrieved by the judgment passed by the learned trial Court, the accused preferred an appeal. The learned appellate Court vide the impugned judgment dated 28.09.2018 has set aside the judgment passed by the learned trial Court, allowed the appeal and eventually acquitted the accused of the offence under Section 138 of N.I. Act. Hence, this appeal.

8. It is submitted by the learned counsel appearing on behalf of the appellant/complainant that the learned JMFC has rightly convicted the accused for the offence under Section 138 of N.I. Act and sentenced him but the learned appellate Court has erroneously acquitted the accused on the ground that the cheques were given as security. It is also submitted that as per the averments made in the complaint, the cheques were given after six months when the amount agreed under the agreement Ex.P/1 has not been paid by the accused. Therefore, the cheques were not given as security but it was given for discharge of legally enforceable debt. It is also submitted that the agreement Ex.P/1 contained the fact that such cheques have been given by the accused as security but as on the date of agreement since there was a



legally recoverable debt, therefore, it was not given as security. Keeping in view the law laid down by the Hon'ble Apex Court in case of *Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited* reported in (2016) SC 458, the case of complainant against the accused is proved and the acquittal by the learned appellate Court is erroneous. Therefore, prays for allowing the appeal, to convict the accused and sentence him appropriately.

9. *Per contra*, the learned counsel appearing on behalf of the respondent/accused has submitted that the learned appellate Court in paragraphs-6, 7 and 8 has discussed the entire facts revealed from the evidence and rightly acquitted the accused on the ground that since the cheques have been given for security, therefore, the offence under Section 138 of N.I. Act, did not constitute in this case and has rightly acquitted the accused. There is no ground to interfere with the findings of the learned appellate Court. Therefore, prayed of dismissal of appeal.

10. I have heard the learned counsel for the parties and perused the record meticulously.

11. The complainant has specifically stated in his statement that the accused because of his personal needs has taken a loan of Rs.2,00,000/- from him. He has given this amount to the accused on 24.04.2015 having family relationship with him. It was agreed that the aforesaid amount shall be returned within a period of six months and in this respect an agreement Ex.P/1 dated 24.04.2015 was executed, but later on, the accused did not return the said amount within six months. The complainant from time to



time, demanded money from the accused whereupon the accused has given two cheques bearing Nos.039296 dated 24.09.2015 amounting to Rs.1,00,000/- and 039297 dated 24.10.2015 amounting to Rs.1,00,000/-. When the complainant has submitted these cheques for its encashment on 24.11.2015, they have been returned unpaid by the concerned bank with a remark "insufficient funds". He has immediately informed the accused on mobile phone and thereafter given a legal notice dated 10.12.2015. Even after receiving that letter on 12.12.2015, the accused has not returned this money till date, therefore, the complainant has filed the said complaint case. Those cheques are Exs.P/2 and P/4 and the memorandum of the bank are Exs.P/7 and P/8.

12. The learned trial Court on the anvil of statement of the complainant has convicted the accused for the offence under Section 138 of N.I. Act but in appeal, the learned appellate Court has found that both the cheques have been given as security and, therefore, no case is made out against the accused under Section 138 of the N.I. Act, ergo, acquitted him of the aforesaid offence.

13. The document Ex.P/1 is an important document in this respect which contained the fact that after receiving Rs.2,00,000/- as a loan from the complainant, the accused has given at that time two post dated cheques dated 24.09.2015 and 24.10.2015 and an agreement has been executed on 24.04.2015. It is also stated in this agreement that these cheques have been given as security but in paragraphs-3 and 4, it is mentioned that the loan amount shall be returned within six months i.e. 24.10.2015. If such money



has not been returned within the aforesaid period then the complainant shall be at liberty to submit these cheques for encashment of it in the concerned bank and if such cheques have been dishonoured then the entire liability of it shall be on accused and the complainant will be authorized to recover this money from the accused.

14. The entire wording used in Ex.P/1 nonetheless shows that both the cheques have been given as security but the cheques have been given on the date of execution of the document which has been executed after landing Rs.2,00,000/- by the complainant to the accused and after landing aforesaid money, these two cheques amounting to Rs.1,00,000/- each, total Rs.2,00,000/- have been given by the accused. Hence, it cannot be said that on the date i.e. 24.04.2015, these two cheques were issued without there being any legally enforceable debt. Undisputedly, on that date, there was a legally enforceable debt on the accused of Rs.2,00,000/-. The wording used in paragraphs-3 and 4 of this agreement further shows that these cheques were not given simply as security but they were given for the purpose of assuring return of the aforesaid money i.e. Rs.2,00,000/-. If such amount would not be returned within six months i.e. up to 24.10.2025, undisputedly, these cheques would be submitted before the concerning bank for encashment on 24.11.2015 i.e. after elapsing six months' period on 24.10.2025 and this happens in this case too.

15. In case of *Sampelly Satyanarayana Rao* (supra), the Hon'ble Apex Court has held that once the loan amount has been disbursed and as per the agreement, instalments had fallen due on the date of issuance of cheque,



dishonour of such cheque would fall under Section 138 of the N.I. Act. The relevant paragraphs of that judgment are as under:-

"9. We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in *Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845]* with reference to the explanation to Section 138 of the Act and the expression "for discharge of any debt or other liability" occurring in Section 138 of the Act. *We are of the view that the question whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the section is attracted and not otherwise.*

10. Reference to the facts of the present case clearly shows that though the word "security" is used in Clause 3.1(iii) of the agreement, the said expression refers to the cheques being towards repayment of instalments. The repayment becomes due under the agreement, the moment the loan is advanced and the instalment falls due. *It is undisputed that the loan was duly disbursed on 28-2-2002 which was prior to the date of the cheques. Once the loan was disbursed and instalments have fallen due on the date of the cheque as per the agreement, dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.*

11. The judgment in *Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845]* is clearly distinguishable. As already noted, it was held therein that liability arising out of claim for breach of contract under Section 138, which arises on account of dishonour of cheque issued was not by itself on a par with criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of cheque issued for discharge of later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque there was a debt/liability in praesenti in terms of the loan agreement, as against *Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845]* where the purchase order had been cancelled and cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was found that the cheque had not been issued for discharge of liability but as advance for the purchase order which was cancelled. *Keeping in*



mind this fine but real distinction, the said judgment cannot be applied to a case of present nature where the cheque was for repayment of loan instalment which had fallen due though such deposit of cheques towards repayment of instalments was also described as "security" in the loan agreement. In applying the judgment in Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845], one cannot lose sight of the difference between a transaction of purchase order which is cancelled and that of a loan transaction where loan has actually been advanced and its repayment is due on the date of the cheque.

12. The crucial question to determine applicability of Section 138 of the Act is whether the cheque represents discharge of existing enforceable debt or liability or whether it represents advance payment without there being subsisting debt or liability. While approving the views of the different High Courts noted earlier, this is the underlying principle as can be discerned from discussion of the said cases in the judgment of this Court." (emphasis supplied)

16. Relying upon the judgment of ***Sampelly Satyanarayana Rao*** (supra), recently the Hon'ble Apex Court in case of ***Sripati Singh (since deceased) through his sons Gaurav Singh Vs. State of Jharkhand and another*** reported in ***(2022) 18 SCC 614***, has held whether cheques were issued as security to secure return of the amount advance to the drawee and if it is not repaid before due date and cheques have been presented for encashment and if the same is dishonoured, the consequences contemplated under Section 138 and other provisions of the N.I. Act would flow. Even for post dated cheques, Section 138 of N.I. Act shall be attracted. The relevant paragraphs of the said judgment are as under:-

"21. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and



the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.

22. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on demand promissory note' and in all circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.

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28. In the above circumstance, the cheque though issued as security at the point when the loan was advanced, it was issued as an assurance to repay the amount after the debt becomes due for repayment. The loan was in subsistence when the cheque was



issued and had become repayable during June/July 2015 and the cheque issued towards repayment was agreed to be presented thereafter. If the amount was not paid in any other mode before June/July 2015, it was incumbent on the respondent No.2 to arrange sufficient balance in the account to honour the cheque which was to be presented subsequent to June/July 2015."

17. The averments of the complaint filed by the complainant shows that the signed cheques Ex.P/2 and P/4 were handed over by the accused to the complainant. Such handing over of the cheques though allegedly as security *per se* would not extricate the accused from the discharge of liability arising out of such cheques. Even a cheque issued as security pursuant to a financial transaction, it cannot be considered as a worthless piece of paper under every circumstances. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time-frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid before due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. If on such presentation, the same is dishonoured, then matter would certainly fall under Section 138 and other provisions of the N.I. Act.

18. It also revealed from the evidence on record that the cheques were issued towards the repayment of an amount with a time period being stipulated for repayment and such cheques though allegedly issued as security cannot be presented prior to the loan maturing for repayment towards which such cheques are issued. The borrower certainly had an option of repaying the loan amount within stipulated period. In that circumstance, the cheques cannot be presented thereafter, but the evidence shows that no



prior discharge of liability by the borrower/accused.

19. Though it is revealed from the document Ex.P/1 that both the cheques have been given on the date of execution of this agreement i.e. 24.04.2015, but in the complaint it is stated that within a period of six months when this amount has not been returned then the cheques have been given by the accused. Similar is the statement of the complainant in examination-in-chief. There is variation revealed qua Ex.P/1 but such variation has not been got proved by the defence while cross-examining Ramesh (PW-1). He remained intact in the cross-examination despite lengthy cross-examination. A suggestion has been given to this witness by the defence that the agreement Ex.P/1 was executed with free will and having full knowledge of it which shows that the wording used in the agreement was very well known to both the parties and they agreed to the terms of it and executed the document. Nothing revealed from his cross-examination which shaken the testimony given by him in examination-in-chief. Since the variations as revealed from the agreement Ex.P/1, from the complaint and the examination-in-chief of the complainant has not been asked in his cross-examination then such variations cannot be said to have been proved and, therefore, it is of no help to the accused.

20. Having regard to the law laid down in the aforesaid cases by the Hon'ble Apex Court coupled with the evidence on record, it cannot be said that the complainant has utterly failed in proving the offence under Section 138 of the N.I. Act against the accused rather keeping in view the unblemished testimony of the complainant in absence of any rebuttal



evidence, the statement of the complainant found to be fully reliable certainly in light of oral as well as documentary evidence. In the light of law laid down by the Hon'ble Apex Court in the aforesaid cases, the offence of 138 of N.I. Act against the accused has been duly proved by the complainant.

21. Thus, the appellate Court's judgment setting aside the conviction passed by the learned trial Court is perverse and illegal and liable to be set aside while the finding given by the learned trial Court are on cogent basis and, therefore, the conviction of the respondent/accused under Section 138 of N.I. Act as passed by the learned trial Court is hereby affirmable. As far as the sentence part is concerned, the learned trial Court has passed the sentence of six months RI with compensation of Rs.2,40,000/- and Rs.10,000/- as expenses in favour of the complainant is not found to be excessive rather looking to the attending facts and circumstances of the case, it is quite appropriate.

22. Resultantly, this appeal is **allowed**. The impugned judgment of acquittal passed by the lower appellate Court is hereby set aside and the judgment of conviction and order of sentence passed by the learned trial Court is hereby restored and upheld. The learned trial Court is directed to take the accused/respondent in custody and send him to jail as per the order of sentence passed by it.

23. Let a copy of this order along with the record be sent to the trial Court for necessary compliance.

24. Pending interlocutory application, if any, shall stand disposed of.



(RAJENDRA KUMAR VANI)
JUDGE

ac/-