

D. K. Chandel vs M/S Wockhardt Ltd. on 20 January, 2020

Bench: R. Banumathi, A.S. Bopanna

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 132 OF 2020
(Arising out of SLP (CRL.)No.1621 of 2018)

D. K. CHANDEL

VERSUS

M/S WOCKHARDT LTD. & ANR.

O R D E R

R. BANUMATHI, J.:

Leave granted.

(2) This appeal arises out of judgment and order dated 20.12.2017 passed by the High Court of Punjab and Haryana at Chandigarh in CRA-S-1717-SBA of 2005 in and by which the High Court has set aside the Order of the First Appellate Court and restored the judgment of the Trial Court and thereby convicting the appellant under Section 138 of the Negotiable Instruments Act and sentencing him to undergo imprisonment for six months and also imposing fine of Rs.4,17,148/-.

(3) The case of the respondent-complainant is that the appellant-accused purchased the pesticides on credit from the respondent-company and made part payments. Both the appellant and the respondent were maintaining the running accounts. In lieu of payment due and payable to the respondent, the appellant has issued a cheque on 30.04.1999 of Rs.4,17,148/- drawn on State Bank of India at Bathinda (Punjab).

When the said cheque was presented for collection the same was returned Date: 2020.01.24 18:40:07 IST Reason:

with the endorsement “insufficient funds”. The intimation of dishonoured of cheque was received by the respondent on 26.05.1999. Since no payment was made and the amount was not forthcoming, the respondent filed a complaint against the appellant under Section 138 of the N.I. Act.

(4) Upon consideration of the evidence adduced by the respondent-complainant, the Trial Court/Judicial Magistrate found that the cheque was issued for discharge of the debt and the same was proved on the basis of the statement of account of the respondent-complainant and since the cheque was dishonoured due to insufficient funds, the Trial Court held the appellant guilty and convicted him for the offence punishable under Section 138 of the N.I. Act and sentenced him imprisonment for six months. Additionally, the Trial Court also imposed fine of Rs.4,17,148/- and in default thereof the appellant to undergo imprisonment for two months. Being aggrieved the appellant has filed the appeal. Learned Additional Sessions Judge, Bathinda, by Judgment dated 13.03.2004 set aside the conviction and allowed the appeal. Learned Additional Sessions Judge held that the respondent-complainant did not produce cash and account books to prove that the amount was due and payable by the appellant. Learned Additional Sessions Judge also held that the authorising to file the complaint was much prior to date of issue of cheque and on those grounds learned Additional Sessions Judge reversed the conviction and acquitted the appellant.

(5) Being aggrieved, the respondent-complainant has filed revision before the High Court. By the impugned order, the High Court has set aside the judgment of learned Sessions Judge and allowed the appeal of the respondent. The High Court in the impugned judgment held that “the reason given by the lower Appellate Court that he did not bring the cash book or order book etc. could well be understood, if civil suit is tried” but on the contrary the order passed by the lower Appellate Court is in the criminal case filed under Section 138 of the N.I. Act. Insofar as the authorisation in favour of the respondent to file the complaint is concerned, the High Court held that the Resolution of the company dated 22.04.1999 empowered the complainant to file a complaint in all such cases and therefore has no relevance to the date of the cheque i.e. 30.04.1999. (6) Being aggrieved, the appellant has preferred this appeal. In compliance of Order passed by this Court on 11.05.2018, the appellant has deposited fine amount of Rs.4,17,148/- on 08.01.2019 in the Registry of this Court and the same is lying in non-interest bearing account. The appellant was also granted exemption from surrendering by the Hon’ble Judge, In- Chamber, on 16.02.2018 (7) We have heard Mr. Yadav Narender Singh, learned counsel appearing for the appellant and Ms. Saman Ahsan, learned counsel appearing for the respondent and also perused the impugned judgment and the materials on record. (8) As held by the Trial Court as well as by the High Court that the cheque was issued towards the amount due and payable by the appellant for purchase of pesticides. As rightly observed by the High Court production of the account books/cash book may be relevant in the civil court; but may not be so in the criminal case filed under Section 138 of the N.I. Act. This is because of the presumption raised in favour of the holder of the cheque. In view of the concurrent findings recorded by the Trial Court as well as by the High Court we do not see any ground warranting interference with the conviction of the appellant under Section 138 of the N.I. Act. (9) So far as the question of sentence is concerned, the cheque was issued by the appellant, for discharge of the debt, way back in the year 1999. Considering the fact that the cheque was issued in the year 1999 and having regard to the other facts and circumstances of the case and in the interest of justice we deem it appropriate to modify the sentence of imprisonment imposed upon the appellant and also the fine amount of Rs.4,17,148/-

(10) In the result, the impugned judgment is modified and the appeal is partly allowed to the extent indicated below. For the conviction under Section 138 of the N.I. Act, the appellant is imposed upon

only fine amount of Rs.4,17,148/- and the sentence of imprisonment imposed upon the appellant is set aside. The appellant has already deposited the said amount with the Registry of this Court and the same be disbursed to the respondent forthwith. No costs.

.....J. (R. BANUMATHI)J. (A.S. BOPANNA) NEW DELHI, JANUARY 20, 2020.

ITEM NO.13

COURT NO.5

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 1621/2018

(Arising out of impugned final judgment and order dated 20-12-2017 in CRAS No. 1717/2005 passed by the High Court Of Punjab & Haryana At Chandigarh) D. K. CHANDEL Petitioner(s) VERSUS M/S WOCKHARDT LTD. & ANR. Respondent(s) Date : 20-01-2020 This petition was called on for hearing today. CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI HON'BLE MR. JUSTICE A.S. BOPANNA
For Petitioner(s) Mr. Yadav Narender Singh, AOR Mr. Mukesh Verma,Adv.

Mr. Jagdish Parshad,Adv.

Mr. Prakash Yadav,Adv.

For Respondent(s) Ms. Saman Ahsan,Adv.

Mr. Sanjeev K. Kapoor,Adv.

For M/S. Khaitan & Co., AOR UPON hearing the counsel the Court made the following O R D E R Leave granted.

In terms of the signed non-reportable order, the appeal is partly allowed.

Pending applications, if any, shall also stand disposed of.

(MAHABIR SINGH)
COURT MASTER

(BEENA JOLLY)
BRANCH OFFICER

(Signed Non-Reportable Order is placed on the file)