Jain P. Jose vs Santosh on 10 November, 2022

Author: J.K. Maheshwari

Bench: J.K. Maheshwari

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2022
(@ SLP (Crl.) No(s). 5241 OF 2016)

JAIN P. JOSE ..... APPELLANT(S

VERSUS

SANTOSH & ANR. ..... RESPONDENT(S

O R D E R

Leave granted.

In our opinion, the impugned judgment passed by the High Court of Kerala, Ernakulam dated 24.07.2015, dismissing the appeal preferred by the appellant – Jain P. Jose, against the judgment of the trial court dated 17.03.2015, cannot be sustained. An order of remand is required.

The judgment under challenge reasons that the appellant – Jain P. Jose had admitted that the entries/details in the cheque bearing No. 054984 dated 02.02.2010 for a sum of Rs.9,32,000/- (Rupees Nine Lakhs Thirty Two Thousand Only) drawn on South Malabar Gramin Bank, Olarikkara Branch, Thrissur, were not in the hand of the accused/respondent- Santosh. Hence, the presumption under Sections 118 and 139 of Negotiable Instruments Act, 18811 does not arise. Accordingly, the High Court agreed with the reasoning given by the trial court that the appellant – Jain P. Jose, was not able to adduce sufficient evidence that he was in a position to advance a loan of Rs. 9 lakhs to the respondent. The High Court relied on 1 For short, the N.I. Act.

the judgment of this Court in “John K. Abraham v. Simon C. Abraham”, (2014) 2 SCC 236.

It is an accepted and admitted position that the respondent accepts his signature on the aforesaid cheque. Interestingly, the respondent had issued notice marked as Exhibit -P3, in which he has stated that the appellant - Jain P. Jose had given loan of Rs. 5 lakhs, albeit, claimed that the loan was taken by the respondent's brother-in-law – Anil. In the notice (Exhibit -P3), the respondent

claimed that he had given the aforesaid cheque signed by him to his brother-in-law – Anil from whom he had taken a loan of Rs. 5 lakhs. Subsequently, his brother-in-law - Anil was involved in criminal cases.

In the aforesaid factual background, we do not think that the High Court was right in holding that the onus was not on the respondent to show that the debt was neither due nor payable. Sections 118 and 139 of the N.I. Act, read:

> 118. Presumptions as to negotiable instruments.
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> — Until the contrary is proved, the following presumptions shall be made:-
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> (a) of consideration — that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
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> (b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;
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> (c) as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
>
> (d) as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;
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> (e) as to order of indorsements —that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
>
> (f) as to stamps —that a lost promissory note, bill of exchange or cheque was duly stamped;
>
> (g) that holder is a holder in due course — that the holder of a negotiable instrument is a holder in due course:
>
> Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.
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> 139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

Referring the Sections of the N.I. Act, a three Judges Bench of this Court in "T. Vasanthakumar Vs. Vijaykumari" (2015) 8 SCC 378, has held:

> "9. Therefore, in the present case since the cheque as well as the signature has been accepted by the accused-respondent, the presumption under Section 139 would operate. Thus the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability. To this effect, the accused has come up with a story that the cheque was given to the complainant long back in 1999 as a security to a loan; the loan was repaid but the complainant did not, return the security cheque. According to the accused, it was that very cheque used by the complainant to implicate the accused. However, it may be noted that the cheque was dishonoured because the payment was stopped and not for any other reason. This implies that the accused had knowledge of the cheque being presented to the bank, or else how would the accused have instructed her banker to stop the payment. Thus, the story brought out by the accused is unworthy of credit, apart from being unsupported by any evidence.
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> This decision, refers to an earlier judgment of this Court in "Rangappa vs. Sri Mohan" (2010) 11 SCC 441, which elucidating on the presumption under Section 139 of the N.I. Act, observes that this includes a presumption that there exists a legally enforceable debt or liability. However, the presumption under Section 139 of the N.I. Act is rebuttable and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested.
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> A recent decision of a three Judges Bench of this Court in "Kalamani Tex and Another vs. P. Balasubramanian" (2021) 5 SCC 283, examines the scope and ambit of the presumption under Sections 118 and 139 of the N.I. Act, to hold:
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> " 14. Once the 2nd appellant had admitted his signatures on the cheque and the deed, the trial Court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The trial Court fell in error when it called upon the respondent complainant to explain the circumstances under which the appellants were liable to pay. Such approach of the trial Court was directly in the teeth of the established legal position as discussed above, and amounts to a patent error of law.
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> 17. Even if we take the arguments raised by the appellants at face value that only a blank cheque and signed blank stamp papers were given to the respondent, yet the statutory presumption cannot be obliterated. It is useful to cite "Bir Singh v. Mukesh

Kumar", where this court held that:

"Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

18. Considering the fact that there has been an admitted business relationship between the parties, we are of the opinion that the defence raised by the appellants does not inspire confidence or meet the standard of 'preponderance of probability'. In the absence of any other relevant material, it appears to us that the High Court did not err in discarding the appellants' defence and upholding the onus imposed upon them in terms of Section 118 and Section 139 of the NIA." In view of the aforesaid factual and legal position, we set aside the impugned judgment with an order of remit to the High Court, to decide the appeal on the basis that the appellant is entitled to the benefit of presumption under Section 139 of the N.I. Act. Thereupon, the High Court will consider the evidence and the material on record to decide whether the offence under Section 138 of the N.I. Act is established and made out.

To cut short the delay, the parties are directed to appear before the High Court on 04.01.2023, when the date of hearing would be fixed.

The appeal is allowed in the aforesaid terms. Pending application(s), if any, shall stand disposed of.

.....J. (SANJIV KHANNA) .....J. (J.K. MAHESHWARI) NEW DELHI;

NOVEMBER 10, 2022.

ITEM NO.17 COURT NO.8 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). 5241/2016

(Arising out of impugned final judgment and order dated 24-07-2015 in CRLA No. 737/2015 passed by the High Court of Kerala at Ernakulam)

JAIN P. JOSE Petitioner(s)

VERSUS

SANTOSH & ANR. Respondent(s)

Date : 10-11-2022 This petition was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE J.K. MAHESHWARI For Petitioner(s) Mr. Romy Chacko, AOR Mr. Sudesh Kumar Singh, Adv.

For Respondent(s) Mr. Biju P Raman, AOR Ms. Usha Nandini V., Adv.

Ms. Yogamaya M.G., Adv.

Mr. John Thomas Arakkal, Adv.

Mr. Nishe Rajen Shonker, AOR Ms. Anu Roy, Adv.

Mr. A. Anwar, Adv.

UPON hearing the counsel, the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY) (R.S. NARAYANAN) COURT MASTER (SH) COURT MASTER (NSH) (Singed order is placed on the file)