

P. Rasiya vs Abdul Nazer on 12 August, 2022

Bench: M.R. Shah, B.V. Nagarathna

1

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1233-1235 OF 2022
(Arising out of SLP (CrL.) Nos. 7430-7432/2022
@ D. No. 13470 of 2019)

P. RASIYA

VERSUS

ABDUL NAZER AND ANR.

O R D E R

1. Delay condoned.

2. Leave granted.

3. We have heard Shri Shinoj K. Narayanan, learned Advocate, appearing for the appellant and Shri Mohammad Sadique T.A., learned Advocate, appearing for respondent No.1.

4. Feeling aggrieved and dissatisfied with the impugned common judgment order dated 26.07.2017 passed by the High Court of Kerala at Ernakulam in Criminal Revision Petition Nos. 637, 638 & 639 of 2017, by which the High Court has allowed the said Revision Applications and has acquitted the respondent No.1-accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short "the N.I.Act") by reversing the concurrent findings recorded by both the Courts below, the original Complainant has preferred the present Appeals.

5. The learned trial Court convicted the accused for the offence punishable under Section 138 of the N.I. Act and sentenced to 16:58:33 IST Reason:

undergo simple imprisonment for three months in each case. The learned trial Court also sentenced to pay a fine of Rs.5,00,000/- and, in default of payment of fine, to undergo simple imprisonment for a further period of six months. The learned trial Court also further ordered that, if the fine amount is realized, the same shall be given to the Complainant as compensation under Section 357(1)(b) of the Cr.P.C.

6. In the appeal preferred by the accused, the learned Sessions Court dismissed the appeal and confirmed the conviction for the offence punishable under Section 138 of the N.I. Act. However, considering the old age of the accused interfered with the order of sentence and ordered that instead of three months simple imprisonment the accused to undergo the sentence of simple imprisonment till the rising of the Court. The first Appellate Court also passed an order to pay a fine of Rs.5,00,000/- and, in default, to undergo simple imprisonment for a period of six months and if the fine amount is realized, the same shall be given to the Complainant as compensation under Section 357 (1)(b) of the Cr.P.C.

7. Feeling aggrieved and dissatisfied with the judgment and orders passed by the Appellate Court affirming the conviction of the accused under Section 138 of the N.I. Act, the accused preferred three different Revision Applications before the High Court. By the impugned common judgment and order, the High Court has reversed the concurrent findings recorded by both the courts below and has acquitted the accused on the ground that, in the complaint, the Complainant has not specifically stated the nature of transactions and the source of fund. However, the High Court has failed to note the presumption under Section 139 of the N.I. Act. As per Section 139 of the N.I. Act, 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 discharge, in whole or in part, of any debt or other liability. Therefore, once the initial burden is discharged by the Complainant that the cheque was issued by the accused and the signature and the issuance of the cheque is not disputed by the accused, in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for any debt or other liability. The presumption under Section 139 of the N.I. Act is a statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the Complainant/holder of the cheque, in that case, it is for the accused to prove the contrary. The aforesaid has not been dealt with and considered by the High Court. The High Court has also failed to appreciate that the High Court was exercising the revisional jurisdiction and there were concurrent findings of fact recorded by the courts below.

8. In view of the above and for the reasons stated above, the impugned common judgment and order passed by the High Court is not sustainable and the same deserves to be quashed and set aside.

9. Under the circumstances, the impugned judgment and order passed by the High Court acquitting the accused for the offence punishable under Section 138 of the N.I. Act is hereby quashed and set aside and the order passed by the learned trial Court convicting the accused for the offence punishable under Section 138 of the N.I. Act confirmed/modified by the learned Sessions Court is hereby restored. Now, the accused be dealt with as per the order passed by the first Appellate Court/Sessions Court. The present Appeals are, accordingly, allowed to the aforesaid extent.

The accused is granted two months' time to pay the fine, as ordered by the learned first Appellate Court.

..... J.

(M.R. SHAH) J.

(B.V. NAGARATHNA) New Delhi;

August 12, 2022.

ITEM NO.23

COURT NO.9

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

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 13470/2019 (Arising out of impugned final judgment and order dated 26-07-2017 in CRLRP No. 637/2017 26-07-2017 in CRLRP No. 638/2017 26-07-2017 in CRLRP No. 639/2017 passed by the High Court Of Kerala At Ernakulam) P. RASIYA Petitioner(s) VERSUS ABDUL NAZER & ANR. Respondent(s) (IA No.70700/2019-CONDONATION OF DELAY IN FILING and IA No.70703/2019-EXEMPTION FROM FILING O.T.) Date : 12-08-2022 This matter was called on for hearing today. CORAM : HON'BLE MR. JUSTICE M.R. SHAH HON'BLE MRS. JUSTICE B.V. NAGARATHNA For Petitioner(s) Mr. Shinoj K.Narayanan, Adv.

Ms. Niveditha R Menon, Adv.

Mr. Aditya Verma, Adv.

Mr. K. Rajeev, AOR For Respondent(s) Mr. Mohammed Sadique T.A., AOR Mr. Alim Anvar, Adv.

Mr. Nishe Rajen Shonker, AOR Mr. Sriram Parakkat, Adv.

UPON hearing the counsel the Court made the following O R D E R Delay condoned.

Leave granted.

The present Appeals are allowed to the extent as indicated in the signed order.

Pending applications, if any, stand disposed of.

(R. NATARAJAN)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
ASSISTANT REGISTRAR

(Signed order is placed on the file)