

RIPUDAMAN SINGH

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v.

BALKRISHNA

(Criminal Appeal No.483 of 2019)

MARCH 13, 2019

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**[DR DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

Code of Criminal Procedure, 1973: s.482 – Quashing of complaint – Appellants claiming to be owner of agricultural land entered into an agreement to sell the land to the respondents and received part payment in cash and remaining in cheques – Along with the agreement to sell, appellants executed a General Power of Attorney in favour of respondent – On presentation, cheques were dishonoured for insufficiency of funds – Appellant issued legal notice and thereafter instituted complaints under s.138 NI Act – Respondent filed petition under s.482 for quashing of complaint – High Court quashed the complaint holding that cheques were not issued for creating any liability or debt but for the payment of balance consideration – Held: Admittedly, the cheques were issued under and in pursuance of the agreement to sell – Though it is well settled that an agreement to sell does not create any interest in immovable property, it nonetheless constitutes a legally enforceable contract between the parties to it – A payment made pursuant to such an agreement is a payment of a duly enforceable debt or liability for the purposes of s.138 – Recourse to the jurisdiction of the High Court under s.482 was a clear abuse of process – The question as to whether there was a dispute as contemplated in the agreement to sell which obviated the obligation of the purchaser to honor the cheque which was furnished in pursuance of the agreement to sell to the vendor, cannot be the subject matter of a proceeding under s.482 and is a matter to be determined on the basis of the evidence which may be adduced at the trial – The order passed by High Court in petition under s.482 was unsustainable – Negotiable Instruments Act, 1881 – s.138.

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A **Disposing of the appeals, the Court**

- HELD:** The finding of the Single Judge of the High Court is not sustainable that the cheques were not issued for creating any liability or debt, but ‘only’ for the payment of balance consideration and that in consequence, there was no legally enforceable debt or other liability. Admittedly, the cheques were issued under and in pursuance of the agreement to sell. Though it is well settled that an agreement to sell does not create any interest in immoveable property, it nonetheless constitutes a legally enforceable contract between the parties to it. A payment which is made in pursuance of such an agreement is hence a payment made in pursuance of a duly enforceable debt or liability for the purposes of Section 138. Moreover, acting on the General Power of Attorney, the respondent entered into a subsequent transaction on 3 August 2013. Evidently that transaction was after the legal notice dated 21 June 2013 and hence could not have been adverted to in the legal notice. Recourse to the jurisdiction of the High Court under Section 482 was a clear abuse of process. [Paras 13, 14] [502-G-H; 503-A-C]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 483 of 2019.

- E From the Judgment and Order dated 31.03.2016 of the High Court of Madhya Pradesh, Bench at Indore in M.C.R.C No. 356 of 2015

With

Criminal Appeal No. 484 of 2019

- F Shyam Divan, Sr. Adv., Santosh Kumar, Visushant Gupta, Mushtaq Ahmad, Advs. for the Appellant.

Akshat Shrivastava, Ms. Pooja Shrivastava, Advs. for the Respondent.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y. CHANDRACHUD, J.

- G 1. Leave granted.

2. These appeals arise from a judgment of a learned Single Judge of the High Court of Madhya Pradesh at its Bench at Indore dated 31 March 2016. The learned Single Judge has allowed a petition under

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Section 482 of the Code of Criminal Procedure, 1973¹ and quashed the complaints instituted by the appellants under Section 138 of the Negotiable Instruments Act, 1881.

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3. The appellants are spouses. Claiming to be owners of certain agricultural land they entered into an agreement to sell dated 28 May 2013 with the Respondent. The sale consideration was Rs. 1.75 crores. The agreement records that an amount of Rs. 1.25 crores was paid in cash and as for the balance, two post dated cheques were issued, each in the amount of Rs 25 lakhs.

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4. The cheques were issued by the respondent in favour of the two appellants in the present appeals. The details of the cheques are as follows:

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(i) Cheque No. 297251 dated 03.06.2013 drawn on Indusind Bank, Indore for an amount of Rs. 25,00,000/- (Rupees twenty-five lacs only) favouring Ripudaman Singh;

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(ii) Cheque No. 297252 dated 02.07.2013 drawn on Indusind Bank, Indore for an amount of Rs. 25,00,000/- (Rupees twenty-five lacs only) favouring Smt. Usha.

5. Together with the agreement, the appellants executed a General Power of Attorney in favour of the respondent. The first of the two cheques was deposited for payment. On 18 June 2013 it was returned unpaid with the remarks “Insufficient funds”. The second cheque dated 2 July 2013 was returned with the same remark by the banker, upon deposit.

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6. After issuing legal notices dated 21 June 2013 and 13 August 2013, the appellants instituted complaints under Section 138 of the Negotiable Instruments Act, 1881. Process was issued by the Judicial Magistrate, First Class.

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7. The respondent filed two separate applications seeking discharge in the respective complaint cases. Those applications were dismissed by the Judicial Magistrate, First Class, Indore on 3 September 2014. On 8 October 2014, charges were framed under Section 138.

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8. The respondent then filed a petition under Section 482 CrPC before the High Court in which the impugned order has been passed.

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¹ “CrPC”

A While allowing the petition, the High Court has adverted to Clause 4 of the agreement between the parties which is in the following terms:

“That on the above property of the seller there is no family dispute of any type nor is any case pending in the court. If due to any reason any dispute arises then all its responsibility would remain

B of the selling party and the payment of cheques would be after the resolution of the said disputes.”

9. The High Court held that a suit in respect of the land, Civil Suit No. 4-A of 2012 is pending before the XIVth Additional Sessions Judge, Indore since 2 September 2011 in which the complainants are arraigned

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10. On this basis, the High Court held that under the terms of clause 4 of the agreement, the cheques could not have been presented for payment. The cheques, according to the High Court, have not been issued for creating any liability or debt but for the payment of balance

D consideration. Holding that the respondent did not owe any money to the complainants, the complaint under Section 138 have been quashed.

11. Assailing the judgment of the High Court, Mr. Shyam Divan, learned senior counsel submits that as a matter of fact, acting on the strength of the General Power of Attorney which was issued by the

E appellants in both the cases, the respondent entered into a sale transaction in respect of the same property on 3 August 2013 for a total consideration of Rs. 3.79 crores. Hence, it has been submitted that the order passed by the High Court is manifestly misconceived.

F 12. On the other hand, learned counsel appearing on behalf of the respondent submitted that clause 4 of the agreement to sell postulated that there was no dispute in respect of the land which was the subject of the agreement to sell nor was there any case pending before the Court. Moreover, it was stated that if a dispute was to arise, it was the duty of the vendor to get it resolved and the payment of cheques would be after the resolution of the dispute.

G 13. We find ourselves unable to accept the finding of the learned Single Judge of the High Court that the cheques were not issued for creating any liability or debt, but ‘only’ for the payment of balance consideration and that in consequence, there was no legally enforceable debt or other liability. Admittedly, the cheques were issued under and in

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pursuance of the agreement to sell. Though it is well settled that an agreement to sell does not create any interest in immoveable property, it nonetheless constitutes a legally enforceable contract between the parties to it. A payment which is made in pursuance of such an agreement is hence a payment made in pursuance of a duly enforceable debt or liability for the purposes of Section 138.

14. Moreover, acting on the General Power of Attorney, the respondent entered into a subsequent transaction on 3 August 2013. Evidently that transaction was after the legal notice dated 21 June 2013 and hence could not have been adverted to in the legal notice. Recourse to the jurisdiction of the High Court under Section 482 was a clear abuse of process.

15. The question as to whether there was a dispute as contemplated in clause 4 of the Agreement to Sell which obviated the obligation of the purchaser to honor the cheque which was furnished in pursuance of the agreement to sell to the vendor, cannot be the subject matter of a proceeding under Section 482 and is a matter to be determined on the basis of the evidence which may be adduced at the trial.

16. For these reasons, we are of the view that the order passed by the High Court in the petition under Section 482 CrPC was unsustainable. We allow the appeals and set aside the impugned judgment and order of the High Court.

17. However, we clarify that we have not expressed any opinion on the merits of the issues which may arise during the course of the trial.

18. The appeals are, accordingly, disposed of.

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

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