

## **Kaushalya Devi Massand vs Roopkishore Khore on 15 March, 2011**

**Equivalent citations: AIR 2011 SUPREME COURT 2566, 2011 (4) SCC 593, 2011 AIR SCW 2283, AIR 2011 SC (CRIMINAL) 1035, 2011 ACD 581 (SC), 2011 (2) AIR KANT HCR 697, (2011) 75 ALLCRIC 516, 2011 (2) SCC (CRI) 472, (2012) 1 CURCRIR 67, (2012) 1 BANKCAS 466, 2011 (3) SCALE 574, 2011 (2) CALCRILR 241, 2011 ALL MR(CRI) 2067, AIR 2011 SC (CIVIL) 1008, 2011 (2) KER LJ 5 NOC, 2011 (2) KER LT 52 SN, 2011 (3) KCCR 282 SN, (2011) 2 NIJ 113, (2011) 2 RECCRIR 298, (2011) 2 RECCIVR 390, (2011) 3 CIVLJ 510, (2011) 2 CAL LJ 77, (2011) 3 CHANDCRIC 144, (2011) 4 RAJ LW 3029, (2011) 3 SCALE 574**

**Author: Altamas Kabir**

**Bench: Altamas Kabir, Cyriac Joseph**

KAUSHALYA DEVI MASSAND

v.

ROOPKISHORE KHORE

(Criminal Appeal No.723 of 2011)

MARCH 15, 2011

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

[2011] 3 SCR 879

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

2. On a complaint filed by the Appellant herein, Smt. Kaushalya Massand, the Respondent herein, Roopkishore, was convicted by the Judicial

Magistrate First Class, Indore (M.P.), under Section 138 of the Negotiable Instruments Act, 1881, in Criminal Case No.445 of 2000. Having regard to the fact that the Respondent had deposited a sum of Rs.3,50,000/-, as against the cheque amounting to Rs.2 lakhs, the learned Magistrate was of the view that sentence of fine only would suffice without awarding any jail sentence. The learned Magistrate, accordingly, sentenced the Respondent to pay a fine of Rs.4 lakhs which was to be paid to the Appellant herein as compensation. However, the learned Magistrate also indicated that a sum of Rs.3,50,000/- had already been deposited and that the balance amounting to Rs.50,000/- was to be deposited by the Respondent and if deposited, the same was to be paid to the Appellant. On failure to deposit the said amount of Rs.50,000/-, the Respondent would have to undergo two months' Rigorous Imprisonment.

3. The order of the learned Magistrate was challenged by the Respondent before the learned Third Upper Sessions Judge, Indore (M.P.), by way of Criminal Revision No.593 of 2006. The learned Sessions Judge while confirming the judgment of conviction passed by the Magistrate, remanded the matter to the learned Magistrate for a fresh hearing on the question of quantum of sentence and to pass an order accordingly.

4. The said orders of the learned Sessions Judge and the learned Magistrate dated 27th December, 2007, and 23rd February, 2007, respectively are the subject matter of the present appeal. Incidentally, the appeal has been filed by the complainant, Smt. Kaushalya Devi Massand, who is being represented by her son, Shri Harish Massand, on the strength of a Power of Attorney executed by the Appellant in his favour.

5. Shri Massand submitted that the offence was in respect of three cheques dated 1st May, 1997, 15th May, 1997 and 30th May, 1997, for Rs.1 lakh each. The said cheques were issued in lieu of the payment of consideration against the sale of property. On presentation of the cheques to the Bank, the same were dishonoured on the ground of insufficient funds. Subsequently, in lieu of the three cheques which had been dishonoured, four cheques drawn on Central Bank of India, Sanyogitaganj Branch, Indore, were issued by the Respondent to the Appellant, namely, (i) Cheque No.0121035 dated 15th June, 1999 for Rs.50,000/-; (ii) Cheque No.0121036 dated 15th July, 1999 for Rs.1 lakh; (iii) Cheque No.0121037 dated 15th August, 1999 for Rs.50,000/-; and (iv) Cheque No.0121038 dated 15th September, 1999 for Rs.1 lakh. The said cheques presented to the Bank were again dishonoured due to insufficient funds resulting in the filing of the complaint, as indicated hereinabove.

6. Shri Massand submitted that since 1997, the Appellant, an old widowed lady, was subjected to unnecessary harassment for the last 14 years and the Respondent had not even been punished with a jail sentence for a day, despite the severe inconvenience and trouble which the Appellant had to suffer on account of the dishonesty of the Respondent and the fraud perpetrated by him. Shri Massand pointed out that while not sentencing the Respondent to a jail sentence despite the enormity of the offence committed by the Respondent, ironically the Magistrate sentenced the Respondent to two months' Rigorous Imprisonment in default of payment of Rs.50,000/- towards the fine/compensation of Rs.4 lakhs. Shri Massand also took us through the order-sheet of the case before the learned Magistrate to show the manner in which the proceedings had been prolonged by

the Respondent.

7. Shri Massand submitted that in order to maintain the faith of the people in the judicial system, it was only proper that a jail sentence be awarded to the Respondent to serve as a deterrent to others involved in similar activities.

8. Mr. Shakil Ahmed Syed, learned Advocate, who appeared for the Respondent, submitted that after an interval of 14 years it would be unjust to sentence the Respondent to a jail term, especially when the initial liability of Rs.2 lakhs had been increased to Rs.4 lakhs by the Magistrate and to Rs.6 lakhs by the High Court. Learned Counsel submitted that the Respondent was ready to pay a further sum of Rs.2 lakhs towards the compensation amount. In addition, learned counsel submitted that a jail sentence for an offence under Section 138 of the Negotiable Instruments Act, 1881, was not mandatory and it was within the discretion of the Magistrate to award a sentence of fine only, as has been done in the instant case.

9. Having considered the submissions made on behalf of the parties, we are of the view that the gravity of a complaint under the Negotiable Instruments Act cannot be equated with an offence under the provisions of the Indian Penal Code or other criminal offences. An offence under Section 138 of the Negotiable Instruments Act, 1881, is almost in the nature of a civil wrong which has been given criminal overtones. The learned Magistrate, in his wisdom was of the view that imposition of a fine payable as compensation to the Appellant was sufficient to meet the ends of justice in the instant case. Except having regard to the submission made that the Appellant/ complainant, is a widowed lady of advanced age, there is no other special circumstance which calls for interference with the order of the learned Magistrate, as confirmed by the High Court, with an increased fine. After an interval of 14 years, we are not inclined to interfere with the order of the High Court impugned in the appeal, except to the extent of increasing the amount of compensation payable by a further sum of Rs.2 lakhs. The said amount of Rs.2 lakhs in addition to the sum of Rs.6 lakhs already directed to be paid by the Respondent to the Appellant, shall be deposited in the Trial Court within two weeks from date and upon such deposit being made, the Appellant will be at liberty to withdraw the same by way of compensation, together with the amounts already deposited, if not already withdrawn. In default of such deposit, the Appellant shall undergo one month's simple imprisonment.

10. The appeal is partly allowed to the aforesaid extent.