

## Geeta Kumari Poudel vs M/S Cvent India Pvt.Ltd on 17 May, 2012

IN THE COURT OF SH.SURESH CHAND RAJAN  
ADDITIONAL SESSIONS JUDGE/SPECIAL JUDGE (NDPS)  
DWARKA COURTS, NEW DELHI

Crl. Appeal no.15/12

Geeta Kumari Poudel  
D/o Sh. B.D.Prasad  
KG-3 Flat no. 68, 2nd floor  
Vikas Puri, New Delhi -110018

....Appellant

Vs.

M/s CVENT INDIA PVT.LTD.  
H-89 Naraina Vihar  
New Delhi -110028

.....Respondent

Appeal filed on :16.02.2012  
Reserved for Order on: 05.05.2012  
Date of order : 17.05.2012

### JUDGMENT

The present appeal U/s 374 Cr.PC has been preferred for setting aside the Judgment dated 11.01.12 and order on sentence dated 30.1.2012 passed by Sh Pawan Singh Rajawat, Ld. MM in case C.C.No. 151/10 titled CVENT India Pvt. Ltd. Vs. Geeta Kumari Poudel whereby the appellant was convicted u/s 138 of N.I.Act and thereafter sentenced vide order dated 30.1.2012; to suffer SI till Rising of the Court and to pay the compensation of Rs.1,00,000/□ to the complainant. Geeta Kumari Poudel Vs. C-Vent India Pvt.Ltd.

2. Briefly stated the facts for giving rise to this appeal are that the respondent had filed complaint u/s 138 NI Act r/w sec.142 of NI Act alleging that the respondent had offered and appellant had accepted the position of Product Consultant (Client Services Division) at the corporate office of the complainant situated at Gurgaon with effect from March 15,2010 on the terms and conditions mentioned in the offer letter and training cum employment agreement dated 19.02.2010. It is further alleged that as per the terms of employment agreement, appellant had issued a cheque dated 6.9.2010 bearing no. 025391 of Rs.80,000/□ drawn on HDFC Bank Ltd. New Delhi in favour of the respondent as a security towards the performance of the terms of the employment contract entered into with the complainant. The appellant being in breach of the terms of employment contract, the complainant in terms of the specific stipulation contained in the agreement presented the cheque for encashment. On presentation, the said cheque was returned unpaid with remarks 'insufficient funds'. Thereafter complainant/respondent sent legal notice dated 5.10.2010 but the appellant did

not care to pay back the said amount. Hence complaint u/s 138 NI Act was filed. After leading pre-emptive evidence, cognizance was taken and accused/appellant was summoned. Notice u/s 251 Cr.PC was served upon appellant/accused to which he pleaded not guilty and claimed trial. The respondent/complainant led evidence before the Ld. Trial court and thereafter statement of accused/appellant u/s 313 Cr.PC was recorded. The accused/appellant also led defence evidence. Thereafter Ld. MM had Geeta Kumari Poudel Vs. C-Vent India Pvt.Ltd.

heard the arguments and passed the Judgment dated 11.01.2012 thereby convicting the appellant for the offence u/s 138 NI Act and thereafter, after hearing the arguments on the point of sentence the appellant was sentenced to suffer SI till rising the court and to pay compensation of Rs. 1,00,000/- . Feeling aggrieved by the said Judgment and order on sentence, the present appeal was preferred by the appellant for setting aside the said Judgment & order on sentence.

3. The present appeal was received by this court and appellant was admitted to bail. Notice was issued to the respondent and counsel for respondent had appeared. Trial court record was summoned and it was also received. Thereafter the appeal was fixed for arguments. I have heard the arguments on this appeal from the Ld. Counsel for the appellant as well as Ld. Counsel for the respondent.

4. During the course of arguments, Ld. Counsel for the appellant has argued that order passed by the Ld.MM is based on conjectures and surmises and the same is against the facts and law. It has been submitted that the respondent/complainant has failed to prove that it was a legally recoverable debt and the cheque in question was issued against the alleged liability. He has submitted that it is admitted fact that the cheque was given to the respondent as security and not for the purpose of encashment. The respondent could not establish that he was entitled for the cheque amount. It has further been submitted that the Geeta Kumari Poudel Vs. C-Vent India Pvt.Ltd.

respondent has not brought any evidence on record to prove that there was any violation or breach of the alleged agreement. The agreement was not a contract or agreement in the eyes of law since it was one sided and not based on the parity. It has been submitted that the respondent cannot force and compel any employee to work under any compulsion, which amounts to forced labour and being violative of the fundamental rights of the appellant. Ld. Counsel relied upon case law 2006 LLR 682 titled American Express Bank Vs Priya Puri. It has been submitted that the respondent has failed to prove that they are entitled to the cheque amount or of spending any alleged amount of cheque upon the alleged training of the appellant. The respondent could not prove that the cheque amount is legally recoverable due and outstanding amount. Ld. Counsel has drawn my attention on the testimony of PW1 as well as his cross examination and stated that CW1 has categorically stated that it was a security cheque and he also admitted that the amount spent upon the training of the accused is not mentioned in the complaint. It has been submitted that there was no evidence led on record by the respondent regarding violation of the agreement and therefore Ld. MM has committed gross error in law. Ld. Counsel has further stated that the actual training was for six months and class room training was for 2 and half months and the appellant started to work like active employee as like other employees with respondent and was not trainee. The alleged agreement does not fall in the category of a legal and valid agreement in Geeta Kumari Poudel Vs. C-Vent India Pvt.Ltd.

the eyes of law. Respondent had not spent any amount of the cheque upon the alleged training of the appellant. It has been stated that the training was supposed to be conducted by the counter parts and in actual the training was conducted by Ajeta Sinha, Jassica and Prashant, who held the profile of Senior Product Consultant, only because they had spent time with the respondent company. The respondent did not impart any training to the appellant on any field which could be used out of event. Ld. MM has not appreciated that the appellant had good and valid reasons for her not coming to the office and she had explained the same in her email sent to the respondent. Since she was in a place called Noamandi without good network facility, she could not be on telephonic conversation and inability to continue further was due to family dispute which could not have been avoided. It has been argued that the appellant has no liability of Rs. 80,000/- towards respondent nor that much amount was spent in 2 and half months. He has stated that the respondent did not spend a single penny on any kind of training upon the appellant. The appellant was experienced person and she did not require any kind of training. Ld. Counsel submitted that Ld. trial court has failed to appreciate and taken into consideration that no notice u/s 138 of NI Act was ever been served upon the appellant and respondent has cooked up a false and baseless story. There is no legally recoverable debt against the appellant and the cheque has been misused by the respondent. It has been submitted that the complaint filed u/s 138 NI Act was not maintainable but Ld. MM has failed to appreciate that the ingredient of sec.138 NI Act are not complete Geeta Kumari Poudel Vs. C-Vent India Pvt.Ltd.

in this case. Ld. Counsel has relied upon Judgments KSL & Industries Ltd. Mumbai Vs. Mannalal Khandelwal & Anr, 2005(2) RCR (Cri) 699, J Daniel Vs. State of Kerala & Anr 1(2006) BC 273 Kerala High Court, 2007(1) JCC (NI) 28 Pine Product Industries & Anr Vs. R.P. Gupta & Sons. , 2006(2) JCC (NI) 177 and stated that the Ld. Trial court has failed to appreciate that in the present case the appellant had rebutted the presumption by attracting sec 118 N.I.Act. It has been prayed that the impugned Judgment and order on sentence may kindly be set aside and accused/appellant may be acquitted in this case.

5. On the other hand, Ld. Counsel for the respondent has argued that the submission made by the Ld. Counsel for accused/appellant are not tenable in the eyes of law. He has argued that the appellant was legally bound as per the employment contract and he has drawn the attention of the court on the terms and conditions of the employment contract and has argued that as per this employment contract the appellant was bound to pay the cheque amount if she fails to complete the period of 30 months with the company because has spent huge amount on training of the appellant. It has been submitted that Ld. Trial court has discussed the ingredients required to prove the case u/s 138 NI Act at length in the order with case laws. The appellant has not denied that cheques does not bear her signatures. So, the order passed by the Ld. MM is a legal order. Ld. MM has not committed any error while passing the present Judgment Geeta Kumari Poudel Vs. C-Vent India Pvt.Ltd.

under challenge. Therefore, the order passed by the Ld. MM does not call for any interference by this court. Utmost care has been taken by the Ld. MM while passing the order. There is no infirmity in the order and it has been prayed that the appeal may kindly be dismissed.

6. In consideration of the arguments advanced by the Ld. Counsel for the appellant as well as Ld.counsel for the respondent, I have also perused the file. On perusal of the appeal file it is revealed that the respondent/complainant had examined one witness. CW1 Sh Varun Sareen, AR of the complainant.

7. CW1 Varun Sareen is the AR of the complainant and he has proved certified copy of certificate of Incorporation Ex.CW1/A and Board resolution Ex.CW1/B. He has deposed that the accused/appellant had accepted the position of Product Consultant at the corporate office of the complainant situated at Gurgaon w.e.f 15th March 2010. He proved the offer letter and training cum employment agreement as Ex.CW1/C and Ex.CW1/D. He has further deposed that as per clause 2 of the training cum employment agreement accused had issued cheque bearing no. 025391 of Rs.80,000/- in favour of complainant as security towards the performance of the terms of employment contract and complainant invested lot of time and resources in training the accused. He has further deposed that being in default of terms of employment contract the complainant presented the cheque for encashment but it was returned Geeta Kumari Poudel Vs. C-Vent India Pvt.Ltd.

unpaid for the reasons insufficient funds vide memo Ex.CW1/E and F. He has further deposed that the complainant served notice dated 5.10.2010 which was duly served and copy of notice and postal receipt are Ex.CW1/H and I. The intention of the accused from the very beginning was malafide, to cheat and defraud the complainant coupled with ulterior motives and designs and despite notice the accused failed to make the payment of the said amount. In cross examination he has stated that the affidavit was prepared by his counsel and he signed the same in the chamber of his counsel. The cheque in question is a security cheque. It is correct that the cheque in question was taken by the company at the time of appointment. It is correct that the amount spent upon the training of the accused is not mentioned in the complaint. The accused stopped coming to the office without any notice. He admitted that legal notice was sent by his counsel. He admitted that there is no acknowledgment card regarding service of the legal notice.

8. Appellant/accused had also examined herself as DW1 before the Ld. Trial court who has stated that she joined Cvent on 19.02.2010. She was required to work for two years and six months training period was included in two years. She was assured that she will be trained in HTML codings and trainers will be from outside. She was required to hand over the cheque as security, if she leaves the services of the complainant before completing the tenure of two years and the complainant will be at liberty to present the cheque for recovery of Geeta Kumari Poudel Vs. C-Vent India Pvt.Ltd.

expenses incurred upon her during training. She has further deposed that the cheque was not filled by her but it was just signed by her and handed over to HR Department. She completed the training and was trained by the employees who were just seniors to her and did not have any profile as a trainer. She worked there for six months during which she had some issues back home for which she had to leave Delhi. She tried to be in touch with the HR representatives to find out how many leave she could take. The HR representatives whom she knew had left the organization and because she had to leave for her home, she could not be in touch with people at Cvent. After reaching home, on 11.08.2010, she wrote an email to find out if there was an emergency exit with Cvent, she received

no reply of her email. She was unaware of the legal process that Cvent started against her. She was even unaware about the cheque getting declined by the bank. When she came back to Delhi in Nov.2010, she came to know about the summons from the court. She tried to contact the people at Cvent by personally visiting but people at Cvent were inhuman to understand the situation and wanted to go with trial. She does not think that she is liable to pay this amount as the training that they promised was never given to her. She has sent resignation through email but no reply has been received by her till date. The reason for resignation was due to family problem which required her immediate personal attention. The amount filled by the complainant in the cheque according to her is not payable by her as she was not given the training by the complainant in which they have incurred this much amount upon her training. Her cross Geeta Kumari Poudel Vs. C-Vent India Pvt.Ltd.

examination was deferred on 7.9.2011 at the request of AR of the complainant as the main counsel was not available. Perusal of the order sheet revealed that on 07.90.2011 opportunity was given to cross examine DW1 subject to cost of RS.2000/- to be paid to DW1. However, during after lunch session file was again taken up and cost imposed was withdrawn in view of the bomb blast occurred in the premises of Hon'ble High Court. On 26.09.2011 non one had appeared on behalf of the complainant and Ld.MM closed the opportunity to cross examine the witness. Thereafter no application moved by the complainant to cross examine DW1.

9. In this case the main gist of the argument of the Ld. Counsel for the appellant is that this case does not fall under section 138 NI Act as the ingredients of said section are not complete. Before proceeding further and adverting to section 138/139/142/118 of N.I.Act, I have considered the facts of the present case in hand. It is admitted fact by the parties that no transaction of any kind had taken place between the complainant/respondent and appellant/accused. The case is that appellant/accused had signed a "Training cum Employment Agreement" for 30 months and she breached the same and therefore the security cheque was presented in the bank. CW1 has stated that the said agreement is Ex.CW1/D. I have perused the statement of accused/appellant recorded by the Ld. Trial court u/s 313 Cr.PC. No question has been put to accused/appellant in her statement as to whether she signed such an Geeta Kumari Poudel Vs. C-Vent India Pvt.Ltd.

agreement or not. The linchpin of Section 313 Cr.PC is the opportunity to 'explain any circumstances appearing in the evidence against him/her'. This means that every circumstance from which the Court would draw the inference of guilt against the accused has to be put to the accused. It is the duty of the Trial Judge to question the accused properly and fairly, bringing home to the mind of the accused, in simple and clear language, the exact case he/she has to meet, each material point that is sought to be used against him/her and of affording him/her a chance to explain it if he/she can and so desires.

10. The opportunity granted under Section 313 Cr.P.C. must be real and not illusionary. Questions must be so framed as to give to the accused clear notice of the circumstances relied upon by the prosecution, and an opportunity to render such explanation as she/he can of that circumstance. Each question must be so farmed that the accused can understand it and appreciate what use the prosecution desires to make of the same against him/her.

11. The Courts employ the concept of prejudice to aid in remedying the injustice. The prejudice in the present case is apparent because the main and specific question regarding execution of agreement has not been put while the case of the respondent/complainant is basing on agreement since cheque in question was issued only on the basis of agreement and there was no other transaction of any kind had taken place Geeta Kumari Poudel Vs. C-Vent India Pvt.Ltd.

between the complainant/respondent and the accused/appellant. Since the main question regarding training cum employment agreement has not been put to appellant/accused, I feel that it is a fit case that the matter be remanded to the trial court for putting the question regarding training cum employment agreement entered into between petitioner and respondent. Ld. Trial court is directed to put the question on this aspect to the petitioner in her statement recorded u/s 313 Cr.PC and thereafter give opportunity to petitioner for her defence, if any and then decide the matter afresh.

12. Consequently, I set aside the impugned judgment dated 11.01.2012 and order on sentence dated 30.1.2012 and direct the Ld.trial court to put additional question regarding training cum employment agreement u/s 313 Cr.PC to the petitioner. The case will thereafter proceed from that stage onwards in accordance with law.

13. Parties are directed to appear before the Ld. Trial court on 25.05.2012.

Trial court file be sent back with the copy of this order and appeal file be consigned to record room.

Announced in the Open Court on 17.05.2012.

(SURESH CHAND RAJAN) ADDL.SESIONS JUDGE/ SPECIAL JUDGE(NDPS) NEW DELHI  
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