

Meenu Jain vs . Padam Chand Jain Judgement Dt. ... on 23 April, 2019

Meenu Jain Vs. Padam Chand Jain

Judgement dt. 23.4.2019

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-05
(NORTH) ROHINI COURTS, DELHI

CNR No. DLNT01-010457-2017
Criminal Appeal No. 119/2017

Meenu Jain
W/o Sh. Rakesh Jain
R/o C-215, Surya Nagar, Sahibabad,
Ghaziabad (Uttar Pradesh).Appellant/accused

Versus

Padam Chand Jain
Since deceased
through Legal Heirs
(1) Chandra Prabha Jain
 W/o Late Padam Chand Jain
 R/o House No.1, Ishwar Colony,
 R. P. Bagh, Delhi.

(2) Rajesh Jain
 S/o Late Sh. Padam Chand Jain
 R/o A/3-42, Second Floor,
 Sector-11, Rohini, Delhi-110085.

(3) Rakesh Jain
 S/o Late Sh. Padam Chand Jain
 R/o B-3, Parsana Apartment,
 Model Town, Delhi.

.Respondents

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Date of institution : 13.9.2017
Date of arguments : 29.1.2019
Date of judgement : 23.4.2019

JUDGEMENT

1. The present criminal appeal is directed against a judgement dated 4.8.2017 convicting appellant under Section 138 of Negotiable Instruments Act and order dated 21.8.2017 sentencing the

appellant to simple imprisonment for six months and directing appellant to pay a compensation in the sum of Rs.6,50,000/- to deceased respondent (complainant).

2. The deceased respondent Padam Chand Jain (complainant) had filed a criminal complaint no. 184/1/2014 (original complaint no. 147/2013) in the court of Ld. Metropolitan Magistrate against accused Smt. Meenu Jain (appellant herein). As per complaint, complainant was a 70 years old senior citizen, who retired in the year 2000 and was earning his livelihood accrued from pensionary benefits. It was alleged that in January 2013, the accused approached complainant twice or thrice and had requested for a loan of Rs.5 lacs on the ground of making arrangement for marriage of her daughter and promised to return the same within two months along with 3% interest. Pursuant to cordial relation with accused, who was resident of the same locality, Meenu Jain Vs. Padam Chand Jain Judgement dt. 23.4.2019 complainant after arranging the said amount advanced a family loan of Rs.5 lacs in the month of February 2013 against a duly signed and undated cheque bearing no. 821630 drawn on State Bank of India, Vijay Nagar, which was given by accused to complainant against in discharge of the said loan. It was alleged that accused failed to return the money within the promised period despite various telephonic and personal request. However, accused rather became hostile to complainant and told him to stop raising demand. Ultimately complainant presented the said cheque to his bank namely Indian Bank, Gujrawala Town, Part II, Delhi on 8.7.2013 for its encashment after duly filling in the details of respective columns of the said undated but signed cheque. The said cheque was returned by the banker of complainant as dishonoured along with the bank returning memo dated 11.7.2013 due to insufficient funds in the bank account of the accused. Complainant issued a legal notice dated 22.7.2013 to accused (i.e. within one month from the date of receipt of bank returning memo). The said legal notice was served upon the accused. Accused sent a reply dated 29.7.2013 to the said legal notice. Consequently, the complainant filed the present complaint.

3. After preliminary evidence, Ld. Metropolitan Magistrate summoned the accused. After appearance of the accused, Ld. Meenu Jain Vs. Padam Chand Jain Judgement dt. 23.4.2019 Metropolitan Magistrate framed a notice under Section 251 CrPC on 6.8.2014. The accused (appellant herein) in his reply to the said notice admitted her signatures on the cheque in question. She also admitted that she had received the legal notice and told the court that she had sent the reply dated 29.7.2013 and rejoinder to the said reply was also sent by complainant vide rejoinder dated 21.9.2013. Ld. Metropolitan Magistrate further recorded the plea of accused as under :

"Plea of the accused :

Complainant approached me for grant of loan of Rs.5,00,000/- and I issued the cheque in question in the year 2011. Later on it was revealed that the repayment capacity of the complainant was missing. Hence, I declined from granting the loan and demanded for return of the cheque in question but the complainant claimed that the said cheque was misplaced by him. Believing the version of the complainant to be the correct, no action was taken by me against the complainant. The cheque in question pertains to the year 2011 and the same was misused by the complainant in the year 2013."

4. Since the evidence of complainant Padam Chand Jain (CW1) on affidavit had already been on record during preliminary evidence, the accused cross examined CW1 after framing of notice. In cross examination, complainant (CW1) admitted that he has not placed on judicial file any document to show as to on which date he had advanced money to Smt. Meenu Jain. He admitted that he was not Meenu Jain Vs. Padam Chand Jain Judgement dt. 23.4.2019 having amount of Rs.5 lacs in his bank account in January 2013 but the said amount was available at his house. He admitted that he had not disclosed the availability of Rs.5 lacs in his income tax records. He also did not disclose advancing of loan of Rs.5 lacs to accused in his income tax records. He stated that he was working as Supervisor in Baba Tobacco Company and had retired 16 years ago. Now he was having no business activity. He denied that he had misused the cheque Ex.CW1/1. He denied that he was never in possession of sum of Rs.5 lacs and therefore he did not advance the loan. CW1 denied that he himself intended to avail loan from accused in 2011 and it was accused, who had advanced the loan of Rs.5 lacs to complainant through the cheque in question.

5. CW2 S. N. Gupta, Assistant Manager, SBI Branch, Vijay Nagar brought the Statement of Account No. 10716186590 in the name of Ms Meenu Jain (accused) along with details qua the dishonour of cheque no. 821630 due to insufficient fund. In cross examination, CW2 testified that the cheque book containing the cheque no. 821630 was issued on 17.3.2009. This cheque book contained the series 821612 to 821624. He admitted that he had not brought a certificate under Section 65B of Indian Evidence Act. However, he stated that he had brought a certificate under Section 2A(b) of Bankers' Books of Meenu Jain Vs. Padam Chand Jain Judgement dt. 23.4.2019 Evidence Act.

6. Statement under Section 313 CrPC was not recorded by Ld. Metropolitan Magistrate and he straightway recorded the defence evidence. In defence, accused (appellant) Smt. Meenu Jain had examined herself under Section 315 CrPC after moving an application as per order sheet dated 23.2.2016. Defence examined Sh. Santosh Kumar, an employee of State Bank of India, Vijay Nagar Brnach, Delhi, who brought the statement of account of accused for the period 1.4.2011 to 31.3.2013 and cheque book issuance record. The same are Ex.DW2/A and Ex.DW2/B.

7. After hearing the arguments Ld. Metropolitan Magistrate convicted and sentenced the accused (appellant) vide impugned judgement and order on sentence.

8. Aggrieved, appellant has filed the present appeal. Notice of appeal was given to respondent (complainant). Smt. Chandra Prabha, the wife of respondent, appeared before this court on 7.8.2018 and filed a copy of death certificate of respondent. As per this death certificate, respondent (complainant) died on 14.3.2018 i.e. after filing of the present appeal. Accordingly, the Legal Representatives of deceased respondent namely Smt. Chandra Prabha Jain, Rajesh Jain and Rakesh Jain were arrayed as respondents. Arguments were heard.

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9. The first and foremost objection raised by Ld. Counsel for appellant in the present case is that Ld. Metropolitan Magistrate did not record statement under Section 313 CrPC of appellant (accused).

10. I have considered this submission. I would like to reproduce Section 465(1) CrPC as under :

465. Finding or sentence when reversible by reason of error, omission or irregularity. (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

11. The aforesaid provision makes it clear that if there is any omission in any proceedings during trial, same would not be a ground for reversing a judgement unless such omission has caused a failure of justice. Now it is to be seen as to whether non recording of statement under Section 313 CrPC has resulted in failure. The perusal of trial court record shows that not only had given a detailed reply Ex.PW1/6 Meenu Jain Vs. Padam Chand Jain Judgement dt. 23.4.2019 to legal notice sent by the complainant but also when notice under Section 251 CrPC was framed, accused admitted that the cheque in question bears her signature and she had received the legal notice and that she had sent a reply to the said legal notice. Further, she made a full reply to the legal notice, which has already been reproduced. The accused not only fully cross examined CW1 and other complainant witnesses in detailed but also she stood up as a witness in her defence as DW1. Therefore, while putting her defence, accused (appellant) was fully aware of the allegations against her. Moreover, appellant/defence counsel did not point out to the trial court about the omission under Section 313 CrPC, which her counsel could have done before addressing final arguments. Therefore, no failure of justice has been caused because of non recording of statement under Section 313 CrPC by Ld. Metropolitan Magistrate and I hold that the appellant/accused was not prejudiced in any manner due to the aforesaid procedural omission.

12. Now I take up as to what was testified by accused as DW1. I reproduce the same as under :

"The complainant misused the cheque in question. I never take any loan from the complainant. I gave the cheque in question to the complainant in the year 2011 to provide the loan to the complainant. Further, I did not fill the name, amount in words and date on the cheque in question. I told to the complainant to fill and present the same after taking Meenu Jain Vs. Padam Chand Jain Judgement dt. 23.4.2019 my instruction but the complainant without taking my instructions filled the particulars in the cheque in question and presented it for encashment. The cheque in question was given to the complainant for giving loan to him but later on it

was revealed that the complainant did not have the sufficient backing / means to prepay the loan and then my husband told me to decline to provide loan to the complainant. Therefore, the cheque in question was demanded from the complainant but the complainant stated that the cheque in question was misplaced somewhere and he will return the same after tracing out the same. That the complainant misused the cheque in question in the year 2013. Further, I even replied the legal notice stating all true facts and I also made a police complaint in this regard."

13. The perusal of reply Ex.PW1/6 sent by accused (appellant) to complaint, plea of accused to notice under Section 251 CrPC and testimony of accused as DW1 would show that as per defence of appellant, complainant had asked for a friendly loan and in view of this request of complainant, accused had issued the cheque in question without filling the name, amount and date. It is the stand of accused (DW1) that she told the complainant to fill the columns after taking her instructions but complainant without taking her instructions filled the particulars in the cheque and presented it for encashment. To my mind, this plea is patently false. If a person wants to give a loan through a cheque, she will not give a blank cheque. It is not a normal behaviour of a person, who is issuing cheque for advancing loan. Rather she will fill all particulars in it. On the contrary, it is a common Meenu Jain Vs. Padam Chand Jain Judgement dt. 23.4.2019 practice in market to give a signed blank cheque against a loan taken from the payee. I may mention here that DW1 has testified that the cheque in question was given to complainant for giving loan to him. But later it was revealed that complainant did not have sufficient means to repay the loan. Then her husband told her decline the loan to complainant. When accused demanded the cheque from the complainant, complainant told her that the cheque in question was misplaced somewhere and he will return the same after tracing it out. I am of the opinion that if this was the situation, a normal conduct of accused was that the accused should have informed her bank to stop any payment through that cheque. No such effort was made by accused to stop misuse of the cheque. Therefore, it is clear that the stand/defence of accused as testified by her is totally false and is cooked up story and I have no hesitation to say that it is a cooked up story.

14. Ld. Counsel for appellant has stressed the issue that in this complaint itself, the complainant had stated that accused had issued a blank signed cheque and when the accused did not return the money, complainant filled the columns and presented the cheque. It is argued that since there is no documentary proof that complainant had advanced a loan of Rs.5 lacs to accused, it is clear that the Meenu Jain Vs. Padam Chand Jain Judgement dt. 23.4.2019 complainant had misused the cheque by filling the date, amount etc. later on without the consent of accused.

15. I have considered the submissions of Ld. Counsel for appellant and I am of the opinion that the same is specious. I would like to mention herein that in her reply Ex.PW1/6 to the legal notice of complainant, accused has stated as under :

"That in the year 2011 your client was in the dire need of funds hence approached our client for friendly loan of Rs.5.00 lacs and our client under bonafide belief issued the cheque and instructed, as she gave it signed and undated hence, asked your client to present the cheque for availing loan after instruction he should verify as my client

was not having sufficient fund in 2011 December."

16. This itself shows that accused had issued the cheque for a sum of Rs.5 lacs, though the other particulars were filled by complainant as mentioned by him in his complaint.

17. Now the question is as to whether the cheque was issued in discharge of lawful debt by the accused to complainant and whether the presumption under Section 139 of Negotiable Instruments Act has been rebutted by the accused. Ld. Counsel for appellant has strongly relied upon the following case law :

(1) Basalingappa Vs. Mudibasappa, Supreme Court of India, Date of judgement 9.4.2019, Criminal Appeal No. 636 of 2019.

(2) Anss Rajashekar Vs. Augustus Jeba Ananth, Supreme Court of India, Date of decision 15.3.2019, Criminal Appeal Meenu Jain Vs. Padam Chand Jain Judgement dt. 23.4.2019 No. 95□96 of 2019.

(3) K. Subramani Vs. K. Damodara Naidu, Supreme Court of India, Date of decision 13.11.2014, Criminal Appeal No. 2402 of 2014.

18. Ld. Counsel for appellant has pointed out that aforesaid case law is fully applicable to this case because respondent (complainant) has neither proved any loan document showing advancement of loan of Rs.5 lacs to accused. He has also not been able to show that he had a financial capacity to advance such a huge loan. He had a small amount in his bank account. He had not testified in the court as to what was his source of acquiring Rs.5 lacs in cash. Complainant did not show the said amount in his income tax returns. It is further argued by Ld. Counsel for appellant that Section 269 SS of Income Tax Act an amount more than Rs.10,000/□should be paid through cheque. Therefore, advancement of Rs.5 lacs as loan in cash is illegal. In such circumstances, the presumption under Section 139 of Negotiable Instruments Act stands rebutted. It is argued by Ld. Counsel for appellant that once the accused has rebutted the presumption under Section 139 of Negotiable Instruments Act, it is for the complainant to prove that there was a legally recoverable debt payable by accused to him and that in discharge of the said liability, accused had issued the cheque in question. Ld. Counsel for appellant has argued that Meenu Jain Vs. Padam Chand Jain Judgement dt. 23.4.2019 complainant had failed to prove legally recoverable debt and therefore, appellant/accused deserve acquittal.

19. On the other hand, Ld. Counsel for respondent has referred to following case law :

(1) Bir Singh Vs. Mukesh Kumar, Supreme Court of India, Date of decision 6.2.2019, in criminal appeal no. 230□231 of Supreme Court of India.

(2) Dilip Chawla Vs. Ravindra Kumar, Delhi High Court, Date of decision 10.8.2017, Criminal Revision Petition no.

607/2016.

20. Ld. Counsel for respondent while referring to aforesaid judgements has argued that the purpose of Section 138 to Section 142 of N. I. Act is to give credibility to Negotiable Instruments in business transactions and that it is not necessary that every loan transaction should be entered into after an agreement. Further, advancement of loan in cash may entail negative consequences for an income tax assessee for having acted in breach of Section 269 SS of Income Tax Act and he can be subjected to a penalty under Section 271(D). However, this provision does not provide that such transaction would become null and void. Ld. Counsel for respondent argued that a meaningful reading of provision of N. I. Act including Section 20, 87 and 139, makes it amply clear that a person, who signs a cheque and makes it over to payee remains liable unless he adduces evidence to Meenu Jain Vs. Padam Chand Jain Judgement dt. 23.4.2019 rebut the presumption that the cheque had been issued for payment of a debt or in discharge of liability. It is argued that in Bir Singh Vs. Mukesh, Hon'ble Supreme Court of India has held that if a signed blank cheque is presented to a payee towards some payment, the payee may fill up the amount and other particulars. Accordingly, it is argued that the defence (appellant) had been unable to rebut the presumption under Section 139 of N. I. Act and accordingly, Ld. Metropolitan Magistrate has rightly convicted and sentenced the appellant.

21. I have carefully perused the impugned judgement. I find that Ld. Metropolitan Magistrate has discussed S. K. Jain Vs. Vijay Kalra and K. Subramani Vs. K. Damodara Naidu cited by accused before him. Ld. Metropolitan Magistrate was of the opinion that to the aforesaid cases, huge amounts of Rs.31 lacs and Rs.29 lacs were involved and that in view of such big amount, complainant was expected to prove the source of income. Ld. Metropolitan Magistrate was of the view that complainant was a retired Government servant and amount of Rs.5 lacs was not such a big amount. Therefore, he opined that the aforesaid authorities are not applicable to the present case.

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22. While agreeing with Ld. Metropolitan Magistrate, I am of the opinion that Hon'ble Supreme Court of India and High Court have decided each case in view of its own spectrum of circumstances. Non execution of a loan agreement, non disclosure of source of money and non disclosure of loan in ITRs or advancing loan amount, which is more than Rs.10,000/□ are the factors which are to be appreciated in background of overall scenario in which transactions took place. Sometimes, the aforesaid facts weigh heavily in favour of accused. However, sometimes there are other factors, which nullify the aforesaid effect. Therefore, this case is also required to be considered in backdrop of its own facts. It is true that there is no written loan agreement, nor there is any declaration of advancement of this loan to Income Tax Authorities, nor the amount was given by cheque. It is also true that the source of money has not been disclosed by the complainant. But at the same time, it must be kept in mind that advancing loan in cash and getting a cheque against it is a common practice. The accused herself has admitted issuing the cheque in question to complainant. I have already discussed that the defence of accused that she had issued the cheque to complainant as a loan, is totally false. A false defence has dangerous consequences for an accused. Not only it falsifies the defence, it also has an effect to Meenu Jain Vs. Padam Chand Jain Judgement dt. 23.4.2019 corroborate the case of opposite party. Therefore, by taking a false stand, the appellant/accused has

strengthened the presumption under Section 139 of N. I. Act instead of successfully rebutting it.

23. In these circumstances, I am of the opinion that complainant has successfully proved its case and Ld. Metropolitan Magistrate had rightly convicted and sentenced the appellant. Therefore, I uphold the impugned judgement and dismissed the appeal with the modification that in default of payment of compensation of Rs.6.5 lacs, the appellant shall further undergo simple imprisonment for three months. The appellant, who is on bail, is taken to custody. Sentence warrants be prepared and she be sent to Jail to serve the sentence.

24. Copy of judgement be supplied free of cost to the appellant.

25. Copy of judgement along with the trial court record be returned to the trial court.

26. Appeal file be consigned to record room.

Announced in the open court on 23.4.2019. VINOD KUMAR Date: 2019.04.23 16:20:01 +0530
(Vinod Kumar) Additional Sessions Judge□05 (North) Rohini Courts Delhi