

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S) . 607-608 /2019
(Arising out of SLP(Crl.) No(s).8655-8656/2015)

VIJAY GOPALA LOHAR

APPELLANT (s)

VERSUS

PANDURANG RAMCHANDRA GHORPADE & ANR.

RESPONDENT (s)

O R D E R

Leave granted.

The appellant was acquitted by the Trial Court for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') and sentenced to pay a fine of Rs.40,000/-.

The case of the complainant/respondent is that the appellant took a hand loan of Rs.50,000/- with an assurance that he would return the amount within six months. Two cheques for an amount of Rs.25,000/- each were issued by the appellant in favour of the respondent/complainant. The cheques were deposited in the bank by the respondent/complainant which were returned with an endorsement "funds insufficient". The Respondent issued two notices on 04.03.2004 and as no payment was made even after the receipt of the notices, he filed two complaints under Section 138 of the NI Act. Though the amount of Rs.25,000/- was mentioned in the notices, there was a reference to the loan amount which had to be returned by the appellant according to the notices. The Trial Court held that the notices were defective on the ground that the notices

mentioned loan amount and not the cheque amount. The Trial Court was of the opinion that the notices were contrary to Section 138 of the NI Act.

The High Court took a different view and was of the opinion that there was no satisfactory evidence led by the appellant that the cheques in question were issued for the discharge of a legally enforceable debt. On an interpretation of clause(b) of the proviso to Section 138 of the NI Act the High Court held that there was no failure on the part of the respondent/complainant in making a demand for the payment of the amount of the cheque by issuance of a notice. The High Court observed that the words "loan amount" should not have been mentioned in the notice. However, the High Court was convinced that the respondent demanded the payment of Rs.50,000/- which was the cheque amount. While holding that the view of the Trial Court was patently incorrect, the High Court reversed the judgment of the Trial Court and convicted the appellant.

The learned counsel for the appellant submits that pursuant to the interim order passed by this Court an amount of Rs.80,000/- has been deposited in this Court.

Learned counsel for the appellant relied upon clause(b) of the proviso to Section 138 of the NI Act to submit that the demand by the notice should be only the cheque amount and not the loan amount. A perusal of the notice, according to him, would show that the notice refers to the loan amount and not the cheque amount. He relied upon the judgments of this Court in the cases of "Suman Sethi vs. Ajay K. Churwal & Anr." (2000) 2 SCC 380, "K.R. Indira vs. Dr. G. Adinarayana" (2003) 8 SCC 301 and "Rahul Builders vs.

Arihant Fertilizers & Chemicals & Anr." (2008) 2 SCC 321 in support of his submission that the notice under Section 138 of the NI Act can be issued only for the cheque amount and not for any other amount more than the cheque amount.

We have examined the aforesaid judgments cited by the learned counsel for the appellant.

There is no dispute regarding the proposition that the notice issued under Section 138 of the NI Act has to be only for the cheque amount and not for any other amount more than the cheque amount. In the judgments referred to above the notice issued under Section 138 of the NI Act referred to loan amounts which were much higher than the cheque amounts. Whereas, in the instant case, the loan amount and the cheque amount is the same i.e., Rs.50,000/-. Therefore, the above mentioned judgments cited by the learned counsel for the appellant are not applicable to this case.

In view of the aforesaid, we see no reason to interfere with the judgment of the High Court. The appeals are dismissed.

The amount lying in the Registry shall be paid to the respondent along with interest.

.....J.
[L. NAGESWARA RAO]

.....J.
[M.R. SHAH]

NEW DELHI;
APRIL 05, 2019.

ITEM NO.42

COURT NO.13

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.)No(s).
8655-8656/2015

(Arising out of impugned final judgment and order dated 28-04-2015
in CRLAP No. 823/2009 28-04-2015 in CRLAP No. 824/2009 passed by
the High Court Of Judicature At Bombay)

VIJAY GOPALA LOHAR

Petitioner(s)

VERSUS

PANDURANG RAMCHANDRA GHORPADE . & ANR.

Respondent(s)

Date : 05-04-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Dr. Sushil Balwada, AOR
Mr. Satbir Pillania, Adv.
Somire Deswal, Adv.
Mr. Ajay Senger, Adv.

For Respondent(s) Mr. Amol B. Karande, AOR
Mr. Vijay Khemkar, Adv.

Ms. Shubada Phaltankar, Adv.
Mr. K.V. Muthu Kumar, Adv.
Mr. Nishant Ramakantrao Katneshwarkar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are dismissed in terms of the Signed Order.

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

(ASHWANI KUMAR)
COURT MASTER (SH)

(KAILASH CHANDER)
ASSISTANT REGISTRAR

(Signed Order is placed on the file)