

Joginder Singh vs J K Chauhan on 27 April, 2013

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IN THE COURT OF SH SUNIL BENIWAL : METROPOLITAN MAGISTRATE
- 03 : SOUTH : SAKET COURT : NEW DELHI

Joginder Singh vs J K Chauhan
CC No 180/1
U/s 138 Negotiable Instruments Act

Unique Identification No : 02406R0329082010

JUDGMENT

(1) Serial number of the case	:	180/1
(2) Name of the complainant	:	Joginder Singh Proprietor of M/s Khalsa Construction Company
(3) Name of the accused, parentage & residential address	:	J K Chauhan Proprietor of M/s J K Construction Company
(4) Offence complained of or proved	:	138 Negotiable Instruments Act
(5) Plea of the accused	:	Pleaded not guilty
(6) Final Order	:	ACQUITTED
(7) Date of Institution	:	30/07/2010
(8) Date on which reserved for judgment:	:	27/04/2013
(9) Date of Judgment	:	27/04/2013

BRIEF STATEMENT OF THE REASONS FOR THE DECISION

The material facts as carved out from the complaint are that complainant and accused are contractors who are engaged in construction work. The complainant was assigned the construction work by the accused during July 2009 for the property no. B-144, C R Park, New Delhi. The complainant carried out the construction work at the aforesaid property as assigned by the accused and the construction work was completed in the month of February 2010. It was further averred in the complaint, as agreed mutual between the parties, the construction work was fixed @ Rs.80/- sq.

ft. and a total no. of 3009 sq. ft. work was completed by the complainant. An estimate of the work carried out at the said property including loss of steel plates at the assigned property worked out of Rs.2,98,720/- out of which an amount of Rs.2,00,000/- was paid by the accused through cheques to the complainant. On 05/04/2010, a balance of Rs.98,720/- was remained to be paid by the accused to the complainant for construction work. It was further averred in the complaint that during the course of transaction of payment, the accused issued cheque no. 283765 dated 03/12/2008 for an amount of Rs.50,000/- drawn on Punjab National Bank, Vaishali, Ghaziabad, UP. The complainant presented the aforesaid cheque in his account for encashment. However, the same was returned dishonoured by the banker of accused with the remarks "Insufficient Funds" vide return memo dated 01/06/2010. The complainant made a demand for payment of the said amount of money by giving a Demand Notice dated 25/06/2010 to accused. Statutory notice of demand was duly served upon accused but she failed to make the payment of the said amount to complainant within stipulated time. Thereafter, the complainant has filed this complaint U/s 138 of Negotiable Instruments Act, 1881 (hereinafter "the Act") against the accused.

2. On 06.01.2011 after being satisfied that the complainant has a prima facie case against the accused, the court summoned accused for offence U/s 138 of the Act.

3. Accused appeared pursuant to the process issued by the court and on 30/06/2011, the particulars of the offence were read over and explained to the accused, to which he pleaded not guilty and claimed trial.

4. In order to substantiate its case, the complainant examined himself and Mohd. Qaiser, Deputy Branch Manager from Bank of Maharashtra as the complainant witness.

5. All the circumstances appearing in the evidence against the accused were put in order to enable him to offer him explanation. In his statement U/s 313 CrPC recorded on 21/11/2011, accused stated that he had opened two bank accounts, one in the name of Jitender Kumar that was savings account and the other was in the name of M/s J. K. Construction, which was his company on the same day in the same bank and the bank had issued two separate cheque books. It was further stated that due to manual error committed by the bank, the entry pertaining to issuance of cheque books were wrongly entered. Also, in the bank record as the cheque book issued for complainant's personal account was entered in bank record as issued to J. K. Construction and the cheque book issued to J. K. Construction was entered in bank record as issued to him. Accused further stated that due to this mistake committed by bank, the cheque in question alongwith fifteen other cheques got rejected and he was subsequently informed by bank about the same and the bank later on issued fresh cheque books. Accused further stated that thereafter, he made the payment against the cheque in question to the complainant vide cheque bearing no. 283892 drawn on Punjab National Bank, Vaishali, Ghaziabad branch and the same was cleared on 10.12.2009 from his account in favour of the complainant. Accused further stated that since the payment against the cheque has already been paid, he had no liability against the cheque in question. Accused further stated that he was having sufficient balance on the dates when the cheque in question was presented for payment in his account.

6. Accused examined only one witness in his defence evidence who is DW-1 Parvender Kumar, Senior Manager at Punjab National Bank.

7. Arguments have been advanced by both the parties at length. It has been argued by Ld. counsel for the complainant that from evidence, he has proved that the cheque in question was signed by accused which was dishonoured and despite service of legal notice, accused did not make payment. It is argued that during cross examination of witnesses, nothing contradictory has come out and the complainant has been able to prove his case to the hilt. It has been argued that accused has failed to discharge the burden cast upon him to rebut the presumption.

8. Per contra, for knocking down the edifice of complainant case, it has been argued by Ld. counsel for defence that no case is made out against accused as he is innocent and complainant has misused the cheque in question. It has further been argued that accused has been able to successfully rebut the presumption raised against him.

9. I have heard both the parties at length and perused the record. Before entering into factual matrix of the present case, I deem it fit to discuss certain statutory provisions of Negotiable Instruments Act. Section 118 (A) of N I Act provides for presumptions regarding consideration for a Negotiable Instrument. It reads as under :

"That every negotiable instrument was made or drawn for consideration and that every such instrument when it has been accepted, endorsed, negotiated or transferred was accepted, endorsed, negotiated or transferred for consideration".

10. Section 139 of the Negotiable Instruments Act provides for presumption in favour of a holder. It reads as under :

"It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, or any debt or other liability".

11. Apex court in Rangappa vs Mohan AIR 2010 SC 1898 while overruling the judgment titled Krishna Janardhan Bhatt vs Dattatraya G Hegde AIR 2008 SC 1325 observed in para 14 that :

"the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observation in Krishna Janardhan Bhatt (supra) cannot be correct.....This is of course in the nature of a rebuttable presumption and it is opened to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested".

12. Therefore, in view of the statutory provisions and Apex Court's judgments, there is a presumption in favour of holder of the cheque that he has received the same for discharge in whole or in part of any legally enforceable debt or other liability. It is a well settled principle of law that the

presumption available U/s 139 N I Act can be rebutted by the accused by adducing evidence. Therefore, the burden of proof is on the accused to discharge his burden. The accused can prove the non existence of consideration by raising a probable defence and if he proves the same, then only the onus would shift upon complainant, who has to prove it as a matter of fact and his failure to prove would dis-entitle him to grant the relief.

13. Apex Court in Krishna Janardhan Bhatt vs Dattatraya G Hegde AIR 2008 Supreme Court 1325 has held as follows :

"23.Standard of proof on the part of an accused and that of the prosecution in a criminal case is different".

14. I shall now appreciate the testimony of complainant witnesses to see whether the accused has discharged the burden of mandatory presumption or whether the guilt of accused has been proved beyond reasonable doubt by the complainant in the present case.

15. Apex Court in Krishna Janardhan Bhatt's case (supra) has also held at para 25 that :

"25. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities".

Inference of preponderance of probabilities can be drawn not only from the materials brought on records by the parties but also by reference to the circumstances upon which he relies".

16. Therefore, what has been upheld by Apex Court in the above noted case is that accused can prove his defence by "preponderance of probabilities" whereas prosecution has to prove the guilt of accused beyond all reasonable doubts. It was also held by Apex Court in the said case that :

"26. A statutory presumption has an evidentiary value. The question as to whether the presumption whether stood rebutted or not, must, therefore, be determined keeping in view the other evidences on record. For the said purpose, stepping into the witness box by the appellant is not imperative. In the case of this nature, where the chances of false implication cannot be ruled out, the background fact and the conduct of the parties together with their legal requirements are required to be taken into consideration".

17. Now, I shall examine the testimony of all the witnesses produced by both the complainant as well as the accused. Complainant examined himself as CW 1 and reiterated the contents of the complaint in his post summoning evidence. Complainant examined Mohammed quaser, deputy manager bank of Maharashtra, branch greater Kailash as his 2nd witness who deposed that the disputed check exhibited as CW 1/A was returned and dishonoured for the reason "insufficient funds". Accused disputed this claim of the complainant and submitted that there was sufficient balance in his account on the days that the cheque was presented and the reason submitted by the complainant

because of which the disputed cheque got bounced is incorrect. Accused explained that the bank had issued two cheque-books, one for the personal account of the accused and the other one for the company account of the accused's company. Accused submitted that it was because of the manual mistake of the bank that the cheque in question got dishonoured because the bank mixed up the cheque-books of the personal account with that of the company account. Accused submitted that in lieu of the dishonoured cheque exhibit CW 1/A, he issued another check bearing number 283892 for the same amount of rupees 50,000 which was honoured upon presentation. Since the cheque bearing number 283892 was honoured in lieu of cheque number 283765, therefore his liability towards the complainant for the disputed cheque exhibit CW 1/A had been discharged and is not liable to be tried and convicted for offence under section 138 negotiable instruments act. In order to prove his defence, accused also examined a witness from his bank, senior manager at Punjab National bank, namely shri parvender kumar who had brought the summoned record of accused JK Chauhan which was exhibited as exhibit DW 1/A (Colly). He deposed that the cheque bearing number 283765 which is the disputed cheque in question was wrongly entered in other account of accused Jitender Kumar Chauhan, that is in his savings account and this particular check bearing number 283765 was from the cheque-book which was issued to J.K. construction company and was wrongly entered in the computer system. He further deposed that for this reason 6 cheques of the same cheque-book were dishonoured. He further deposed that on 5th of December 2009, the available balance of messers J. K. Construction company was Rs. 17 lakhs 20,124 and on 1 June 2010 the balance was Rs. 9 lakhs 62,868. He further deposed that that particular account was cash credit account which is open for business purpose of the account holder and the credit limit of this account was up to Rs. 20 lakhs. This witness was cross-examined by counsel for the complainant and in his cross-examination also the witness deposed that the present cheque got dishonoured due to the wrong manual entry into the computer system of the bank. He further deposed that the mistake of the bank was brought to the notice of the account holder in writing on 16 March 2010. The witness also refuted the suggestion given by counsel for complainant that he was deliberately concealing the facts in order to save/ protect the interests of the account holder that is the accused. Statement of the accused under section 313 criminal procedure code was recorded in which the accused maintained the same version of defence which he had taken in his notice framed under section 251, criminal procedure code. The defence of the accused did not vary at all throughout the course of the trial. After taking the evidence of both the complainant as well as the accused, the court summoned a witness on his own in order to harmonise the contradictions appearing in the evidence of Banks' witnesses which was crucial in order to ascertain the veracity of the complainant's case as well as the accused's defence. This witness namely Mr Ved Prakash, senior manager bank of Maharashtra, that is the accused's bank deposed that disputed cheque exhibit CW 1/A was deposited in his branch on 4th of December 2009 and presented to Punjab National bank on 5th of December 2009. He deposed that the disputed cheque was dishonoured with the reason "cheque is out of allocated range". He deposed that the disputed cheque was again deposited on 28th of May 2010 and returned back on 29th of May 2010 with the remarks "kindly contact drawer /drawee bank and please present again". He also deposed that the earlier memo issued by his branch exhibit CW 1/B was incorrect by virtue of the reason given for dishonour. He deposed that it was a clerical error. The plea taken by the accused that he had sufficient balance in his account on the day the disputed cheque was presented was very material in order to prove his defence because this plea if proved would have shifted the onus of proving the case upon the complainant as the

reason for dishonour of the disputed cheque exhibit CW 1/A was stated to be "insufficient funds". The complainant could not bring out anything contradictory in the defence plea of the accused as well as the testimony of defence witness number 1.

18. Apex Court in Krishna Janardhan bhatt's case (supra) has held "26. A statutory presumption has an evidentiary value. The question as to whether the presumption stood rebutted or not, must, therefore, be determined keeping in view the other evidences on record. For the set purpose, stepping into the witness box by the appellant is not imperative. In the case of this nature, where the chances of false implication cannot be ruled out, the background fact and the conduct of the parties together with their legal requirements are required to be taken into consideration".

19. Section 138 of negotiable instruments act prescribes various reasons for which the accused shall be liable for dishonour of the cheque if all the conditions and ingredients of offence under section 138 negotiable instruments act are proved to have been committed. Some of these reasons are:-

1. Insufficient funds
2. account closed
3. stop payment
4. exceeds arrangement, etc

20. Over the years, the honourable apex court as well as the honourable High Courts have added various other reasons because of which the drawer of the check could be held liable for offence under section 138 negotiable instruments act. The honourable apex court has time and again held that even if the disputed cheque is dishonoured on various grounds for example stop payment, exceeds arrangement, refer to drawer/drawee, it has to be seen whether there was sufficient balance in the account of the account holder to honour the cheque or not in order to ascertain the genuineness or veracity of the defence plea of the accused. In the present case, the accused has shown and proved that he had more than sufficient balance to honour his cheque exhibit CW 1/A. Moreover, the statement of account exhibited as CW 1/I also shows that a cheque bearing number 283 892 for a sum of rupees 50,000 was presented and honoured in the account of the accused which fact has neither been disputed nor controverted by the complainant throughout the entire trial. Now, it has been deposed by the banks' witnesses that the disputed cheque was dishonoured on account of a manual mistake which was committed by the bank's employees and it was not the fault of the accused. Subsequently, it has also been proved by the accused that as soon as this fact came to the notice of the accused, he issued another cheque bearing number 283892 in lieu of the bounced cheque bearing number 283765, which was honoured upon its presentation as has been proved by the bank's records which were exhibited during the course of the trial.

21. In view of above discussion, accused J K Chauhan stands acquitted of offence U/s 138 N I Act. Bail bond & surety bond of accused shall remain intact for a period of 06 months for the purpose of Section 437(A) CrPC. File be consigned to record room.

Announced in the open court on 27/04/2013 (SUNIL BENIWAL) Metropolitan Magistrate -03/N I Act/South Saket Court/New Delhi Certified that this judgment contains 13 pages and each page bears my signature.

(SUNIL BENIWAL) Metropolitan Magistrate -03/N I Act/South Saket Court/New Delhi