

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 28 OF 2019
(@ SPECIAL LEAVE PETITION (CRL.)NO.8100 OF 2017)

RAJESH S/O MADHUKARRAOJI TOTE

...APPELLANT(S)

VERSUS

KAMAL S/O CHATURBHUJJI MANDHANIA

...RESPONDENT(S)

O R D E R

Leave granted.

2. This appeal arises out of the judgment dated 12.07.2017 in Criminal Appeal No. 491 of 2008 reversing the acquittal and convicting the appellant-accused under Section 138 of N.I. Act and imposing the compensation amount of Rs. 4,90,000/- along with fine of Rs. 50,000/- to be paid to the respondent-complainant.

3. The respondent-complainant runs a shop-M/s Kisan Bandhu having a business in the agricultural industry. The appellant-accused is the owner of M/s Rajesh Agro Trader and involved in agricultural industry. The appellant and the respondent used to transact business amongst themselves in cash and also in credit. The appellant on 30.12.2002 issued a cheque bearing No. 2282696 drawn on Bank of India, Kangaon Branch for an amount of Rs. 2,45,553/-/-. On 29.01.2003, the said cheque was dishonoured with endorsement "exceeds arrangement". On 05.02.2003, notice was issued to the

appellant-accused demanding payment of the cheque amount. The appellant-accused in spite of receipt of notice, had not chosen to reply.

4. The trial court dismissed the complaint filed by the respondent under Section 138 of the Negotiable Instruments Act and acquitted the appellant-accused on the ground that respondent-complainant had failed to establish by cogent evidence that the appellant-accused had given the cheque (Exh. 23) in order to discharge a legally enforceable debt. The Trial Court further held that since it was not proved that the disputed contents on the cheque, viz. erasing "1998" and correcting it as "2002", "the amount in words and in figures" whether were written by the appellant or with his consent, the appellant could not be held to have committed an offence punishable under Section 138 of N.I. Act, 1881.

5. In appeal by the complainant, the High court reversed the judgment of acquittal and convicted the appellant u/s 138 of N.I. Act and thereby affirming the judgment of the Trial Court affirming the conviction.

6. Since respondent has not entered appearance, Mr. S. Mahendran, Advocate was appointed through Supreme Court Legal Services Committee.

7. We have heard Mr. Hrishikesh Chitale, learned counsel appearing on behalf of the appellant and Mr. S. Mahendran, learned counsel for the respondent and also perused the impugned judgment and materials on record.

8. Insofar as the contention that the date of the cheque was erased and corrected from '30.12.1998" as "30.12.2002" as observed by the High Court that the cheque was dishonoured with an endorsement "exceeds arrangement" and the cheque was not dishonoured on the ground that there was correction in the date of the cheque or that the signature of the appellant-accused differs. That apart as held by the High Court even though, the appellant-accused received the notice on 12.02.2003, the appellant-accused neither complied with the notice nor gave any reply. The appellant has not explained as to why he has not sent reply to the notice - Exhibit No. 27 pointing out that the claim of the respondent is false and unacceptable to the appellant.

9. Considering the findings of the High Court and the materials on record, we do not find any ground warranting interference with the conviction of the appellant-accused under Section 138 of the Negotiable Instruments Act.

10. However, considering the facts and circumstances of the case, the fine amount of Rs.4,90,000/- (Rupees four lakhs ninety thousand) and the fine amount of Rs. 50,000/- (Rupees fifty thousand) imposed upon the appellant are reduced to Rs. 2,50,000/- (Rupees two lakhs fifty thousand). In compliance of the interim order of this Court dated 10.09.2018, the appellant has already deposited the said amount before the Trial Court.

11. The appeal is partly allowed by reducing the fine amount to Rs.2,50,000/- .

12. The Trial Court shall disburse the amount to the

respondent either an application filed by the respondent or by issuing notice to the respondent.

.....J.
[R. BANUMATHI]

NEW DELHI
8TH JANUARY, 2019

.....J.
[INDIRA BANERJEE]

ITEM NO.11

COURT NO.8

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 (CrI.) No(s). 8100/2017
(Arising out of impugned final judgment and order dated 12-07-2017
in CRLA No. 491/2008 passed by the High Court Of Judicature At
Bombay At Nagpur)

RAJESH S/O MADHUKARRAOJI TOTE

Petitioner(s)

VERSUS

KAMAL S/O CHATURBHUJJI MANDHANIA

Respondent(s)

(Appln. For exemption from filing certified copy)

Date : 08-01-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. Hrishikesh Chitale, Adv.
Mr. Vikay Kari Singh, Adv.
Mr. Chandra Prakash, AOR

For Respondent(s) Mr. S. Mahendran, Adv.

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

Leave granted.

The appeal is partly allowed in terms of the signed
order.

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

(MADHU BALA)
COURT MASTER (SH)
(Signed order is placed on the file)

(PARVEEN KUMARI PASRICHA)
BRANCH OFFICER