

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BHUBANESWAR

Present : - Shri Bishes Kumar Sahu, LL.M.,
Judicial Magistrate First Class,
Bhubaneswar.

1.C.C.Case No. 1378/2004
T.R. No. 1677/2014

Birabar Sahoo, aged about 60yrs,
S/O- Late Golakh Chandra Sahoo,
At- Saileshree Vihar,
PS- C.S.Pur, Dist- Khurda.

.....**Complainant**

-Versus -

Lala Niladri Bihari Ray, aged about 37 yrs,
S/O- Bimal Kumar Ray, At- Plot No. A-17,
Lingaraj Vihar, Pokhariput,
PS- Airfield, Dist- Khurda.

.....**Accused**

Counsels for the Complainant: Shri R.C.Saranghi & his associates,
Bhubaneswar

Counsels for the Accused : Shri A. Biswal & his associates,
Bhubaneswar

Date of Conclusion of Argument : 18.12.2014

Date of Pronouncement of Judgment : 18.12.2014

Offence U/s- 138 of Negotiable Instrument Act 1881.

J U D G M E N T

1. The accused named above stands his trial for the commission of the Offence U/s- 138 of Negotiable Instrument Act 1881 (In short N.I.Act)

for dishonour of the cheque issued by him in favour of the complainant for repayment of a legally enforceable debt.

2. The case of the complainant is as follows:-

That the complainant and the accused known to each on friendly relation. In order to his personal liability the accused issued the Complainant a cheque bearing no. 115761 dtd 22.09.03 amounting Rs.2,00,000/- only in favour of the Complainant. When the Complainant deposited the same before his banker for clearance, the cheque was dishonoured due "Account Closed". For this the Complainant sent a demand notice on 20.03.2004 demanding the cheque amount within the 15 days of the receipt of the said notice. The said notice was duly served to the accused. Till date no payment has been made by the accused for which the present complaint and hence, this trial.

3. The pleas of the accused is that he has issued blank cheque to the complainant before the advancement of said money and he has not given any such cheque of large amount. The accused has further pleaded that he has not received any notice from the complainant for the payment of the cheque amount.

4. The points for determination of this case are as follows:-

- (i) Whether the present accused had issued/delivered one cheque bearing no. 115761 dtd 22.09.03 amounting Rs.2,00,000/- only in favour of the Complainant?
- (ii) Whether the said cheque was issued by the accused to the complainant for due discharge of any legal debt/liability in whole or in part thereof or for any other liability and whether the said cheque was presented in the bank by the complainant during the period of its validity?
- (iii) Whether the said cheque was dishonoured, after its presentment in the bank, due to "Account Closed" in the account of the accused/drawer?
- (iv) Whether the complainant/payee has demanded for payment of the cheque amount by giving a legal notice, in writing to the accused/drawer, within thirty days or within the stipulated period?
- (v) Whether the accused/drawer has failed to make the payment within 15 days of the receipt of notice?

5. In order to substantiate its case, the complainant has examined one witness i.e. the Complainant himself as P.W-1. On the other hand, the accused has neither examined any witness in his favour nor the accused relied on any documentary evidence in support his case.

6. It is the settled principles of law that whereas the standard of proof so far as the prosecution is concerned is proof of guilt beyond all reasonable doubt; the one on the accused is only mere preponderance of probability. It is also the settled law that presumption of innocence as human rights and the doctrine of reverse burden introduced by Section-139 of N.I.Act should be delicately balanced which would largely depend upon the factual matrix of each case, the materials brought on the records and having regard to the legal principles governing the same. It is also the settled law that the presumptions will live, exit and survive and shall end only when the contrary is proved by the accused, i.e; the cheque was not issued for consideration and discharge of any debt or liability and a presumption is not in itself evidence, but only make a prima facie case for a party for whose benefit it exists.

7. By considering the above time honoured principles of law and the points for determination of this case into account, let the court to discuss and appreciate, the evidence adduced in the trial and the arguments advanced by both the parties, within the periphery of law. During the course of the trial the P.W-1 in his cross-examination stated that the case has already been settled among themselves outside the court and the accused has already paid the total due amount and he has received the same in cash. He had also admitted that he have no grievance against the accused. Hence he does not prefer to proceed further against the accused in this case.

08. Considering the evidence adduced on the case record, this court is of the opinion that there is no iota of evidence worthiness to the name to connect the alleged accused persons in the alleged crime.

09. In the result, I hold that the Complainant has failed to prove its case against the accused beyond all reasonable doubt and as such the accused namely Lala Niladri Bihari Ray is not found guilty for the offences punishable under sections U/s 138 of the N.I.Act and is acquitted thereof under section 255 (1) of Cr.P.C. and he be set at liberty forthwith and be discharged from his bail bonds.

Enter the case as of "Mistake of Fact".

**Judicial Magistrate First Class,
Bhubaneswar**

This judgment is typed by and corrected by me and pronounced in the open court on this day i.e.; the 18th day of December, 2014 and given under my hand and seal of this Court.

**Judicial Magistrate First Class,
Bhubaneswar**

List of witnesses examined on behalf of the Prosecution.

P.W. 1 : Birabar Sahoo

List of witnesses examined on behalf of the Defence.

: None

List of Exhibits marked on behalf of the Prosecution.

Nil

List of Exhibits marked on behalf of the Defence.

: Nil.

**Judicial Magistrate First Class,
Bhubaneswar**