

IN THE COURT OF THE ADDL. SESSIONS JUDGE: BHUBANESWAR.

PRESENT:-

Sri I.K. Das LLB,
Addl. Sessions Judge, Bhubaneswar.

Crl. Appeal No. 6/14 of 2013

(Arising out of judgment dtd. 28.2.13 in ICC case No. 1590 of 2009 passed by learned Judicial Magistrate First Class, Bhubaneswar)

Amar Mohanty, S/o: Sirish Chandra Mohanty
Surya Nagar, Bhubaneswar, Dist: Khurda
A/p: Uplands, Banshpani, PO: Joda, Dist: Keonjhar

... Appellant

Vrs.

Leeza Rani Mishra, aged about 26 years
D/o: Dilip Kumar Mishra, Qr. No. 65
Banker's Enclave, Prachi Vihar, Palasuni
Bhubaneswar, Dist: Khurda, A/p: Zindal Steel & Power Ltd
Thakurani Iron Ore Mines, PO: Barbil, Dist: Keonjhar

... Respondent.

Advocate for the appellant:- Sri S.K. Bhuyan & Associates
Advocate for the Respondent- Sri A.K. Sahu & Associates

Date of argument- Dt.20.03.14

Date of judgment- Dt.29.03.14

JUDGMENT

This appeal is directed against the judgment of conviction dtd. 28.2.13 for the offence u/s 138 of NI Act and sentence to undergo SI for two months with a direction to the convict to pay a sum of Rs.75,000/- to the respondent u/s 357 of Cr.P.C and in default of payment of the said compensation awarding further SI of one month only passed by learned Judicial Magistrate First Class, Bhubaneswar in ICC case No.1590/09.

2. The LCR reveals that a complaint petition was filed in the Court of learned SDJM, Bhubaneswar with the allegation that the appellant (accused in the trial Court) took a friendly loan of Rs.1,50,000/- to purchase one Mahindra Bolero

Vehicle No. OR 02 AB 4044 from the complainant/respondent. But, the accused did not repay the loan in time inspite of request by the complainant for which the matter was reported before IIC, Laxmisagar PS and the accused also admitted of his liability through one hand note in presence of witnesses. Thereafter, the accused in order to discharge his liability issued cheque No. 769354 on dtd. 8.11.2008 of Rs.1, 00,000/- and another cheque bearing No. 769355 dtd. 10.1.09 for Rs.50,000/- which were drawn on Indus Ind Bank Ltd. Barbil Branch, Barbil, Keonjhar in favour of the complainant. The complainant also presented both the cheques with her banker HDFC, Bank Ltd. Barbil Branch. While the cheque amounting to Rs.1 Lakh was honoured by the bank, the other cheque of Rs.50,000/- was although presented for collection for 3 times i.e. on dtd. 16.1.09,27.1.09 and 11.2.09, the said cheque was dishonoured by the bank and cheque return memo was issued to the complainant on 12.2.09 intimating “funds insufficient” in the account of the accused. Hence, the complainant issued demand notice by Regd. Post with AD on 25.2.09 in the address of the accused at Bhubaneswar and Joda. On 2.3.09 the demand notice issued to Joda was received by one Chinmaya Pattnaik and the demand notice issued in Bhubaneswar address was refused by the accused. The accused also did not pay any heed to return back the money of the complainant for which the complaint petition was filed.

3. During the course of trial, the complainant examined herself by filing her affidavit evidence and she was cross examined by the accused. The cheque in question, intimation of the bank, cheque return memo, demand notice of the complainant in both the address of the accused, postal envelop and the AD card are proved as Ext.1 to 9 by the complainant. The xerox copy of one acknowledgment dtd. 3.11.2008 of the accused admitting his liability to repay the loan to the complainant has also been filed in the Court.

4. On the other hand, the accused-appellant has not examined any witness nor produced any document before the trial Court in support of his plea of innocence and false allegation.

5. Basing on the material on record, learned JMFC, Bhubaneswar came to the conclusion that the complainant has successfully proved her case beyond

reasonable doubt u/s 138 NI Act and therefore, convicted the accused and passed sentence as stated above.

6. By filing the appeal, the accused/appellant has urged that the learned trial Court disposed of the case in a hurried manner without applying judicial mind and proper appreciation of evidence. There was no material before the Court that the appellant was liable to repay any legal debt and further no scrap of paper has been filed in support of such legal liability. It is further objected that the accused while preferred one Crl. Revision before Hon'ble Court challenging the order of trial Court, learned trial Court without waiting for the order of Hon'ble Court passed judgment with a mind to convict the accused. Hence, it is prayed to set aside the judgment and sentence and to acquit the accused.

7. During the course of argument, learned counsel for the appellant argued that the finding of the learned trial Court is without any error or impropriety and based upon the material facts as available in the evidence. Again the accused while examined u/s 313 Cr.P.C by the Court has categorically admitted each and every incriminating question framed by the Court and therefore, there is no scope to interfere with the finding of the learned Court below and hence, the appeal is liable to be dismissed.

8. On perusal of LCR, it appears that the complainant filed her affidavit evidence on 13.5.10 and was examined in Chief on 16.5.11. Her cross examination was declined on the same day and again on recall the complainant was cross examined by the accused on 15.10.11. The evidence from the side of the complainant has been closed on 17.11.11. The case was posted to 28.11.11 for recording accused statement. But, the accused did not appear time and again, although four adjournments were given to the accused, ultimately on 11.1.12 NBW was issued against the accused. Again on 26.4.12, the accused surrendered in the Court and on the same day, his statement u/s 313 Cr.P.C was recorded and he was released on bail. The case was posted for defence evidence and thereafter, the case was posted for argument. On 5.10.12 accused filed a petition u/s 311 Cr.P.C to recall the complainant for further cross examination which was rejected on merit and the case was again posted for argument. Accused took time to argue

the case number of times and the case was adjourned time and again. Ultimately, after hearing argument, the case was posted to 15.12.12 for judgment. On the same day, the judgment was ready for pronouncement but accused did not appear for which again NBW was issued against him. On 28.2.13, the accused surrendered in the Court and in compliance to direction of Hon'ble High Court of Orissa in CRLMC No. 50/13 dtd. 13.2.13 the accused was released on bail and on the same day, judgment was pronounced convicting him and awarding sentence as stated above. Thus, on examining day to day proceeding of the Court, it does not appear in any manner that the Court was hasty in pronouncing the judgment rather it appears that sufficient opportunity was given to the accused to defend his case althrough the trial.

9. It is argued by the defence that there is no evidence on record that the convict was liable to discharge any legal debt incurred from the respondent and the Court has not directed its finding towards this aspect of the case. But, on perusal of the judgment passed by the learned Magistrate, I find learned Magistrate has categorically dealt with the matter and taking the aid of Sec. 139 of the Act came to the conclusion that as appellant has admitted regarding issue of cheque in favour of the respondent, it will be presumed that the cheque was issued to discharge his legal liability. Further, in his statement u/s 313 Cr.P.C. the accused while questioned by the Court has also admitted regarding obtaining loan of Rs.1,50,000/- from the respondent for purchase of Bolero vehicle and also issue of cheque to discharge such liability. Nothing has been elicited from the mouth of P.W.1 during her cross examination to discredit her evidence regarding such liability of the appellant nor any evidence has been led from the side of the defence to contradict the evidence of the respondent. Thirdly, it has also been raised that the pleader notice issued to the appellant was not received by him and is not at all substantiated in view of endorsement on Ext.8 which shows that the appellant refused to receive the pleader notice as per the endorsement of the postal authorities. In question No.5, the appellant was asked by the Court u/s 313 Cr.P.C and he admitted that he refused to receive the demand notice at Bhubaneswar on 28.2.09. Refusal to receive any notice or summon by the

accused is sufficient service in criminal procedure. Therefore, the claim of the appellant in this respect in the appeal is also not substantiated on record. Lastly, defence took the plea that the appellant has already paid Rs.50,000/- to the respondent is neither supported through any evidence during trial nor by producing any document. Only by stating before the Court u/s 313 Cr.P.C is not a ground to discard the evidence of the respondent which is supported with material evidence on record.

10. After going through the evidence and material on record, I do not find any illegality committed by learned trial Court while passing the judgment of conviction u/s 138 of NI Act and awarding sentence against the appellant.

11. In the result, the appeal is dismissed on contest. The judgment of conviction u/s 138 of NI Act and sentence passed thereunder by the learned lower Court against the appellant is hereby confirmed.

Pronounced in the open Court today this the 29th day of March, 2014.

Dictated and Corrected by me.

Addl. Sessions Judge, Bhubaneswar

Addl. Sessions Judge, Bhubaneswar