

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1580 OF 2019
(arising out of Special Leave Petition(Cr)No.8827/2016)

ARUN KUMAR

Appellant(s)

VERSUS

ANITA MISHRA & ORS.

Respondent(s)

O R D E R

Leave granted.

This appeal is against an order dated 09.09.2015 passed by the Indore Bench of the High Court of Madhya Pradesh allowing the application filed by the accused respondent being Misc. Criminal Case No.9128/2012 against an order passed by the Learned Judicial Magistrate, First Class Narsingharh, dated 29.07.2011, refusing to dismiss the Complaint Case No. 547/2009 filed by the appellant complainant against the accused respondent under Section 138 of the Negotiable Instruments Act and the order passed by the Additional District Judge dated 24.08.2012, dismissing the revisional application of the accused respondent against the said order dated 29.7.2011 of the Learned Judicial Magistrate, being Criminal Revision No.195/2011.

The brief facts are that a complaint under Section 138 of the Negotiable Instruments Act was filed by the appellant complainant against the accused respondent on 02.07.2007.

The Judicial Magistrate, First Class, Narsingharh sentenced the accused respondent to six months' imprisonment and further imposed a fine of Rs.3,30,000/- on the accused respondent. Being aggrieved, the accused respondent filed a Criminal Appeal No.231/2007. During the pendency of the criminal appeal, the matter was settled in a compromise before the Lok Adalat on 25.07.2008.

In terms of the compromise, the accused respondent was required to make a payment of Rs.3,51,750/- which was paid on the same day through a post dated cheque drawn in favour of the appellant complainant.

The said cheque drawn by the accused respondent in favour of the appellant complainant as per the compromise arrived at between the appellant complainant and the accused respondent before the Lok Adalat, also got dishonoured, whereupon the appellant complainant filed criminal complaint No.547/2009 u/s 138 of the Negotiable Instruments Act, referred to above, against the accused respondent.

The accused respondent filed an application before the Judicial Magistrate, First Class Narsingharh for dismissal of the complaint. The said application was dismissed. A Revisional application against the order of dismissal of the said application, passed by the Judicial Magistrate was also dismissed by the Sessions Court.

The accused respondent, however, approached the High Court under Section 482 of the Criminal Procedure Code for quashing the proceedings. The application under Section 482, as observed above, has been allowed by the High Court by the order impugned.

The High Court observed that it was an undisputed fact that in respect of earlier cheque issued by the respondent accused, a criminal case had been preferred u/s 138 of the Negotiable Instruments Act and the respondent accused had also been convicted. A fine was also imposed on the respondent accused.

The High Court proceeded to quash the complaint observing that the question of entertaining the second complaint did not arise, when the cheque was not issued in discharge of any debt or liability of the company. It was issued on account of a settlement.

With the greatest of respect, the High Court has misconstrued the judgment of this Court in ***Lalit Kumar Sharma and Anr. vs. State of Uttar Pradesh and Anr.*** reported in 2008 (5) SCC 638.

In ***Lalit Kumar Sharma (supra)***, the Supreme Court found that ingredients of Section 138 of the Act were : i) a legally enforceable debt; ii) that the cheque was drawn for discharge in whole or in part of any debt or other liability, which presupposes a legally enforceable debt; and iii) the cheque so issued had been returned due to insufficiency of funds.

Lalit Kumar's case is distinguishable on facts, in that the cheque had not been issued in discharge of any debt or liability of the Company of which the accused were said to be the Directors. The cheque was found to have been issued for the purpose of arriving at a settlement.

In the instant case, the respondent clearly had a liability. As observed above, there was an earlier adjudication which led to the conviction of the respondent accused. Thus there was adjudication of liability of the respondent accused. While the appeal was pending, the matter was settled in the Lok Adalat in acknowledgment of liability of the accused respondent to the appellant complainant.

The cheque issued pursuant to the order of the Lok Adalat, was also dishonoured. This clearly gave rise to afresh cause of action under Section 138 of the Negotiable Instruments Act.

In *K.N. Govindan Kutty Menon vs. C.D. Shaji* reported in (2012)2 SCC 51 cited by the appellant complainant, this Court held:

"11. In the case on hand, the question posed for consideration before the High Court was that "when a criminal case referred to by the Magistrate to a Lok Adalat is settled by the parties and an award is passed recording the settlement, can it be considered as a decree of a civil court and thus executable by that court?" After highlighting the relevant provisions, namely, Section 21 of the Act, it was contended before the High Court that every award passed by the Lok Adalat has to be deemed to be a decree of a civil court and as such, executable by that court.

23. In the case on hand, the courts below erred in holding that only if the matter was one which was referred by a civil court it could be a decree and if the matter was referred by a criminal court it will only be an order of the criminal court and not a decree under Section 21 of the Act. The Act does not make out any such distinction between the reference made by a civil court and a criminal court. There is no restriction on the power of Lok Adalat to pass an award based on the compromise arrived at between the parties”.

Every award of the Lok Adalat is, as held in *K.N. Govindan Kutty Menon vs. C.D. Shaji (supra)*, deemed to be decree of a civil court and executable as a legally enforceable debt. The dishonour of the cheque gave rise to a cause of action under Section 138 of the Negotiable Instruments Act. The impugned judgment and order is misconceived.

The appeal is accordingly allowed and the judgment and order impugned is set aside.

.....J.
[INDIRA BANERJEE]

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

New Delhi;
October 18, 2019.

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ITEM NO.36

COURT NO.16

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 (Cr1.) No(s). 8827/2016

(Arising out of impugned final judgment and order dated 09-09-2015
in MCRC No. 9128/2012 passed by the High Court Of M.P At Indore)

ARUN KUMAR

Petitioner(s)

VERSUS

ANITA MISHRA & ORS.

Respondent(s)

(IA No. 18861/2016 - EXEMPTION FROM FILING O.T.)

Date : 18-10-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr.N.K.Mody, Sr. Adv.
Mr.Siddhant Gupta, Adv.
Mr.Prabudahu Singh Gour, Adv.
Mr. M. P. Shorawala, AOR

For Respondent(s) Mr.Uday Gupta, Adv.
Mrs.Shivani Lal, Adv.
Mr.M.K.Tripathi, Adv.
Mrs. Sarla Chandra, AOR
Mr.Hiren Dasan, Adv.

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

Leave granted.

The appeal is allowed in terms of the signed order.
Pending application(s), if any, stand disposed of.

(SUSHMA KUMARI BAJAJ)
SENIOR PERSONAL ASSISTANT

(BEENA JOLLY)
BRANCH OFFICER

(The Signed Order is placed on the file)