

DISTRICT- RANCHI

In the court of Additional Judicial Commissioner No- VII, Ranchi

Present- Vishal Srivastava
Additional Judicial Commissioner No- VII-
Ranchi

Ranchi Dated- 29th Day of February, 2024

Criminal Appeal No- 146 of 2022

T.R. No. 02/2024

C.N.R. No-JHRN01-0112092022

(Appeal U/s 374(3) of the Cr.P.C. against the judgment dated 15th September, 2022 passed in Complaint Case No. 1367/2016 whereby and whereunder the appellant has been convicted U/s 138 N.I. Act)

Devendar Kumar, S/o Sri Gopaljee, R/o Chiragora Shamsan Road,
Hirapur, District – Dhanbad **.....The Appellant**

Vs

- 1. The State of Jharkhand**
- 2. K.C. Fab through its Proprietor Kishan Kumar, R/o village –
Kunj Lal Street, Upper Bazar, P.S. - Kotwali, District - Ranchi**

..... Respondents

Ld Counsel for the Appellant:- Sri A.K. Keshri, Ld. Advocate

Ld Counsel for the Opposite Parties:- Sri S. Singh , Ld. A.P.P.
Sri V. Sinha, Ld. Advocate

J U D G M E N T

- 1. This Criminal appeal has been preferred by the convict Devendar Kumar U/s 374(3) of the Cr.P.C. against the judgment dated 15th September, 2022 passed in Complaint Case No. 1367/2016 related**

to u/s 138 of N.I. Act whereby and whereunder he has been convicted and sentenced to undergo one year simple imprisonment with payment of fine of Rs. 4,50,000/- only and in default of payment of fine, six months extra punishment shall be awarded to the convict.

2. The case is that the accused / appellant purchased goods from the complainant shop on credit. The convict issued cheque no. 242809 dated 20.02.2016 of Rs. 2,86,974/- of Axis Bank in favour of complainant. The complainant presented the cheque for encashment which was returned unpaid on 19.04.2016 due to Fund Insufficient. Hence on 03.05.2016 the complainant sent a legal notice through registered post and the said notice was received by the convict on 10.05.2016, hence this case has been filed on 01.06.2016.

3. After enquiry a prima-facie case was found against appellant U/s 138 of N.I. Act. Hence, summon was issued to him and after his appearance substance of acquisition was explained to him. The complainant examined himself and after closing his evidence the statement of appellant was recorded U/s 313 of the Cr.P.C. in which he totally denied all the allegation leveled against him. After heard argument the impugned judgment was passed on 15th September, 2022 whereby and where-under the appellant was convicted.

4. Being aggrieved with the above judgment of conviction the appellant has preferred this appeal.

5. Learned counsel for appellant has submitted that the impugned judgment is perverse and the complainant ought to prove the manner he paid the amount to convict on the basis of which cheques were

issued.

6. **Per contra** Ld. Counsel for the complainant / respondent has submitted that the cheque was given for legal liability and debt. All the requirement of Section 138 of N.I. Act is proved. Hence, the appeal should be dismissed.

7. In light of the rival submissions advanced on behalf of both the parties, this court proceeds to examine the legality and correctness of the impugned judgment of conviction passed by the court below in order to determine whether the court below has appreciated the evidences available on record in the right perspective or not?

FINDING

8. The complainant has examined himself as C.W.1 Kishan Kumar.
Apart the above the following documents have been proved by the complainant:-

Exhibit-1	C.C. of ledger account
Exhibit-2	Cheque no. 242809 dated 20.02.2016
Exhibit-3	Cheque return memo dated 19.04.2016
Exhibit-4	Legal demand notice dated 03.05.2016
Exhibit-5	Registered postal receipt dated 03.05.2016
Exhibit-6	Register postal A.D. dated 10.05.2016

9. The appellant did not not examine any witness.
10. The case is related U/s 138 of N.I. Act which provides the following ingredients :-
1. Cheque must be presented within 3 months or within validity period whichever is earlier.
 2. Cheque must be returned unpaid due to insufficient funds or it

exceeds the amount arranged.

- 3. Fact of dishonour be informed to the drawer by notice within 30 days.
- 4. Drawer of cheque must fail to make payment within 15 days of receipt of the notice.

11. I have carefully scrutinized all the evidences came on record and find that the complainant during his examination has supported the case of prosecution. The complainant has proved the so called ledger account as exhibit-1, cheque as exhibit-2, cheque return memo exhibit-3, legal notice as exhibit-4, postal receipt as exhibit-5, register postal A.D. as exhibit-6. The complainant has supported the case. During cross examination the appellant totally denied about loan given by complainant to him. As per complainant the cheque was filled up by the convict.

The statement of convict has been recorded U/s 313 of the Cr.P.C. in which he totally denied the evidences came against him.

12. So far case U/s 138 of N.I. Act the following evidences are adduced by the complainant which are :-

Cheque issued on	20.02.2016
Cheque return memo	19.04.2016
Legal notice	03.05.2016
Postal receipt	03.05.2016
Register postal AD	10.05.2016
Case filed on	01.06.2016

The above circumstances are clear that cheque was presented in time in the bank and thereafter within 30 days of bouncing of cheque

due to insufficient fund the legal notice was sent through registered post in stipulated time. In spite of receipt of the notice when the appellant failed to return the cheque amount then this case has been filed in time. Hence the requirement U/s 138 N.I. Act has been proved by the complainant.

Now the question is that whether there is any legal liabilities for which the cheque was issued?

In the case record, I have perused the case record and find that the complainant specifically admitted that the appellant had purchased goods on credit for which he had issued the so called cheque which has been proved. In the case record the cheque has been entered properly with signature of appellant. Hence the circumstances are clear that the appellant has to show that it was not issued for any legal liabilities and debt. The appellant has to prove that under what circumstances he had issued the cheque in favour of complainant to rebut his claim. Hence the presumption U/s 139 of the N.I. Act play here and the appellant failed to rebut the presumption goes against him.

13. In the case record, I have carefully scrutinized the impugned judgment of trial court and find that the trial court has rightly hold guilty him. But so far sentencing is concerned, I am of the opinion that the learned counsel for the respondent is present in court and submitted that he is ready to receive Rs. 3,12,000/- as compensation and earlier payment will be set off. The learned counsel for the respondent has submitted that he has already received Rs. 2,25,000/- and now only Rs. 87,000/- are left to be received. Hence in the above circumstances in

my opinion there is no need for any substantial sentence. However the appellant is hereby directed to pay Rs. 3,12,000/- as compensation to the respondent. The appellant undertake that he will return rest Rs. 87,000/- by 31st March, 2024.

14. Hence it is ordered that

ORDER

the Criminal appeal is hereby partly dismissed with modification of sentence. The appellant is hereby directed to pay Rs. 3,12,000/- as compensation and the previous payment will be set off. As per respondent now only Rs. 87,000/- are dues for which the appellant undertakes that he will pay by 31st March, 2024. In payment of compensation the appellant will be suffer simple imprisonment for three months. O/c to return LCR along with the copy of this judgment to the Ld. Trial Court.

(Dictated and corrected by me)

(Vishal Srivastava)
Additional Judicial Commissioner-VII,
Ranchi
29th Day of February, 2024

(Vishal Srivastava)
Additional Judicial Commissioner-VII,
Ranchi
ID No. 00487