

KAUSHALYA DEVI MASSAND
v.
ROOPKISHORE KHORE
(Criminal Appeal No.723 of 2011)

MARCH 15, 2011

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

NEGOTIABLE INSTRUMENTS ACT, 1881:

s.138 – Complaint of dishonour of cheques – Accused sentenced by Magistrate to pay a fine of Rs.4 lakh to complainant – High Court enhancing the amount of fine by Rs. 2 lakh – Appeal by complainant contending for jail sentence to the accused – Held: The gravity of a complaint under the Act cannot be equated with an offence under the provisions of the Penal Code or other criminal offences – An offence u/s 138 of the Act is almost in the nature of a civil wrong which has been given criminal overtones – The Magistrate, in his wisdom was of the view that imposition of a fine payable as compensation to the complainant was sufficient to meet the ends of justice – Besides, after an interval of 14 years, the Court is not inclined to interfere with the order of the High Court impugned in the appeal, except to the extent of increasing the amount of compensation payable by a further sum of Rs.2 lakh.

On a complaint by the appellant, for dishonour of cheques, the Magistrate sentenced the respondent to pay a fine of Rs.4 lakh to the complainant as compensation. The High Court enhanced the fine by Rs. 2 lakh. The complainant filed the instant appeal through the power of attorney contending that because of the respondent the complainant, an old widowed lady, was subjected to harassment for 14 years. Therefore, a jail sentence be awarded to the respondent so that it would serve as a

- A deterrent to others. On the other hand, it was submitted for the respondent that after an interval of 14 years it would be unjust to sentence him to a jail term, especially when the initial liability of Rs.2 lakh had been increased to Rs.4 lakh by the Magistrate and to Rs.6 lakh by the High Court.

Partly allowing the appeal, the Court

- HELD: 1.1. The gravity of a complaint under the Negotiable Instruments Act, 1881 cannot be equated with an offence under the provisions of the Penal Code 1860 or other criminal offences. An offence u/s 138 of the Act, is almost in the nature of a civil wrong which has been given criminal overtones. The Magistrate, in his wisdom was of the view that imposition of a fine payable as compensation to the appellant was sufficient to meet the ends of justice in the instant case. Except having regard to the submission made that the appellant/ complainant, is a widowed lady of advanced age, there is no other special circumstance which calls for interference with the order of the Magistrate, as confirmed by the High Court, with an increased fine. [para 9] [883-F-H]

- 1.2. After an interval of 14 years, this Court is not inclined to interfere with the order of the High Court impugned in the appeal, except to the extent of increasing the amount of compensation payable by a further sum of Rs.2 lakhs in addition to the sum of Rs.6 lakhs already directed to be paid by the respondent to the appellant. [para 9] [883-H; 884-A-B]

- G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 723 of 2011.

- From the Judgment & Order dated 30.7.2009/14.9.2009 of the High Court of Madhya Pradesh at Indore in Misc. Cr. Case No. 1619 of 2008.

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KHORE**

Power of Attorney holder (Air Marshal Harish Masand) for
the Petitioner-In-Person. A

Shakil Ahmed Syed, Shuaibuddin, S. Nadeem Aziz
Taahaa for the Respondent.

The Judgment of the Court was delivered by B

ALTAMAS KABIR, J. 1. Leave granted.

2. On a complaint filed by the Appellant herein, Smt.
Kaushalya Devi Massand, the Respondent herein, C
Roopkishore, was convicted by the Judicial Magistrate First
Class, Indore (M.P.), under Section 138 of the Negotiable
Instruments Act, 1881, in Criminal Case No.445 of 2000.
Having regard to the fact that the Respondent had deposited D
a sum of Rs.3,50,000/-, as against the cheque amounting to
Rs.2 lakhs, the learned Magistrate was of the view that sentence
of fine only would suffice without awarding any jail sentence.
The learned Magistrate, accordingly, sentenced the Respondent
to pay a fine of Rs.4 lakhs which was to be paid to the Appellant
herein as compensation. However, the learned Magistrate also E
indicated that a sum of Rs.3,50,000/- had already been
deposited and that the balance amounting to Rs.50,000/- was
to be deposited by the Respondent and if deposited, the same
was to be paid to the Appellant. On failure to deposit the said
amount of Rs.50,000/-, the Respondent would have to undergo F
two months' Rigorous Imprisonment.

3. The order of the learned Magistrate was challenged by
the Respondent before the learned Third Upper Sessions
Judge, Indore (M.P.), by way of Criminal Revision No.593 of
2006. The learned Sessions Judge while confirming the G
judgment of conviction passed by the Magistrate, remanded the
matter to the learned Magistrate for a fresh hearing on the
question of quantum of sentence and to pass an order
accordingly.

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A 4. The said orders of the learned Sessions Judge and the
learned Magistrate dated 27th December, 2007, and 23rd
February, 2007, respectively are the subject matter of the
present appeal. Incidentally, the appeal has been filed by the
complainant, Smt. Kaushalya Devi Massand, who is being
B represented by her son, Shri Harish Massand, on the strength
of a Power of Attorney executed by the Appellant in his favour.

C 5. Shri Massand submitted that the offence was in respect
of three cheques dated 1st May, 1997, 15th May, 1997 and
30th May, 1997, for Rs.1 lakh each. The said cheques were
issued in lieu of the payment of consideration against the sale
of property. On presentation of the cheques to the Bank, the
same were dishonoured on the ground of insufficient funds.
Subsequently, in lieu of the three cheques which had been
dishonoured, four cheques drawn on Central Bank of India,
D Sanyogitaganj Branch, Indore, were issued by the Respondent
to the Appellant, namely, (i) Cheque No.0121035 dated 15th
June, 1999 for Rs.50,000/-; (ii) Cheque No.0121036 dated
15th July, 1999 for Rs.1 lakh; (iii) Cheque No.0121037 dated
15th August, 1999 for Rs.50,000/-; and (iv) Cheque
E No.0121038 dated 15th September, 1999 for Rs.1 lakh. The
said cheques presented to the Bank were again dishonoured
due to insufficient funds resulting in the filing of the complaint,
as indicated hereinabove.

F 6. Shri Massand submitted that since 1997, the Appellant,
an old widowed lady, was subjected to unnecessary
harassment for the last 14 years and the Respondent had not
even been punished with a jail sentence for a day, despite the
severe inconvenience and trouble which the Appellant had to
G suffer on account of the dishonesty of the Respondent and the
fraud perpetrated by him. Shri Massand pointed out that while
not sentencing the Respondent to a jail sentence despite the
enormity of the offence committed by the Respondent, ironically
the Magistrate sentenced the Respondent to two months'
H Rigorous Imprisonment in default of payment of Rs.50,000/-

towards the fine/compensation of Rs.4 lakhs. Shri Massand also took us through the order-sheet of the case before the learned Magistrate to show the manner in which the proceedings had been prolonged by the Respondent. A

7. Shri Massand submitted that in order to maintain the faith of the people in the judicial system, it was only proper that a jail sentence be awarded to the Respondent to serve as a deterrent to others involved in similar activities. B

8. Mr. Shakil Ahmed Syed, learned Advocate, who appeared for the Respondent, submitted that after an interval of 14 years it would be unjust to sentence the Respondent to a jail term, especially when the initial liability of Rs.2 lakhs had been increased to Rs.4 lakhs by the Magistrate and to Rs.6 lakhs by the High Court. Learned Counsel submitted that the Respondent was ready to pay a further sum of Rs.2 lakhs towards the compensation amount. In addition, learned counsel submitted that a jail sentence for an offence under Section 138 of the Negotiable Instruments Act, 1881, was not mandatory and it was within the discretion of the Magistrate to award a sentence of fine only, as has been done in the instant case. C
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E

9. Having considered the submissions made on behalf of the parties, we are of the view that the gravity of a complaint under the Negotiable Instruments Act cannot be equated with an offence under the provisions of the Indian Penal Code or other criminal offences. An offence under Section 138 of the Negotiable Instruments Act, 1881, is almost in the nature of a civil wrong which has been given criminal overtones. The learned Magistrate, in his wisdom was of the view that imposition of a fine payable as compensation to the Appellant was sufficient to meet the ends of justice in the instant case. Except having regard to the submission made that the Appellant/ complainant, is a widowed lady of advanced age, there is no other special circumstance which calls for interference with the order of the learned Magistrate, as confirmed by the High Court, with an increased fine. After an F
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- A interval of 14 years, we are not inclined to interfere with the order of the High Court impugned in the appeal, except to the extent of increasing the amount of compensation payable by a further sum of Rs.2 lakhs. The said amount of Rs.2 lakhs in addition to the sum of Rs.6 lakhs already directed to be paid by the
- B Respondent to the Appellant, shall be deposited in the Trial Court within two weeks from date and upon such deposit being made, the Appellant will be at liberty to withdraw the same by way of compensation, together with the amounts already deposited, if not already withdrawn. In default of such deposit,
- C the Appellant shall undergo one month's simple imprisonment.

10. The appeal is partly allowed to the aforesaid extent.

R.P.

Appeal partly allowed.