

A. T. SIVAPERUMAL

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v.

MOHAMMED HYATH (D) BY LRS.

(Criminal Appeal No. 587 of 2017)

MARCH 27, 2017

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[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

Negotiable Instrument Act, 1881 – s.138 – Acquittal of accused consequent to settlement between the parties – Towards discharge of a liability, appellant-accused issued a cheque to the complainant – The cheque, when presented for realization, was returned by the bank with endorsement “account closed” – After issuance of statutory notice, complaint filed u/s. 138 – Trial court acquitted appellant-accused – However, High Court reversed the acquittal and convicted the appellant – On appeal, held: Parties were suggested to arrive at an amicable settlement, to which both parties agreed – Parties arrived at a settlement – As a result, impugned judgment of High Court set aside and appellant acquitted of charge u/s.138.

Allowing the appeal, the Court

HELD: 1.1 By an earlier order, this Court had granted stay on a condition that the appellant should deposit an amount of Rs.3,00,000/- (Rupees Three Lacs) before the Trial Court, which has been duly complied with. When the matter came up for hearing, the son of the appellant was present in the Court. Respondent No.4 was present in the Court, who stated that he is representing all the legal representatives of complainant. The parties and their counsel were suggested whether they can talk to each other to arrive at an amicable settlement, for which both the parties as well as counsel appearing for the parties readily agreed. [Para 5] [671-C-D]

1.2 After talking to each other the parties have arrived at a settlement for a sum of Rs.6,00,000/- (Rupees Six Lacs) including the amount of Rs.3,00,000/- (Rupees Three Lacs) already deposited before the Trial Court. The appellant is acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881. [Paras 6, 7] [671-E-F]

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A **CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 587 of 2017.**

From the Judgment and Order dated 06.01.2011 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 895 of 2004.

B Ms. Lata Krishnamurti, Dr. B. Kalaivannan, Neeraj Shekhar, Ashutosh Thakur, Animesh Kumar, Ajay Awasthi, P. R. Shankar, S. Syed Mahaboob, P. R. Bala Subramanian, Advs. for the Appellant.

A.T.M. Sampath, Ms. T. S. Shanthi, Rahul Nagpal, Advs., for the Respondents.

C The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

D 2. This appeal arises out of the judgment of the High Court of Karnataka at Bangalore in Crl. A. No.895 of 2004 in and by which the High Court set aside the acquittal of the appellant and convicted him for the offence under Section 138 of the Negotiable Instruments Act and imposing a fine of Rs.11,00,000/- (Rupees Eleven Lacs), in default to undergo simple imprisonment for a period of six months. Out of the fine amount, the High Court has directed that a sum of Rs.10,50,000/- (Rupees Ten Lacs Fifty Thousand) be paid as compensation to the legal representatives of the complainant/Mohammed Hyath.

E 3. The case of the complainant/Mohammed Hyath is that the appellant/accused borrowed a sum of Rs.10,00,000/- (Rupees Ten Lacs), on 01.01.2002, from him as a loan to develop his A.T.S. Groundnuts Sweets Factory at Bannerghatta Road, Bangalore and undertook to repay it on or before 16.08.2002 with simple interest. Further case of the complainant is that towards discharge of the said liability, the appellant/accused issued a cheque for a sum of Rs.10,22,419/- dated 14.11.2002 drawn on Karnataka Industrial Co-operative Bank Limited, Bangalore Rural Branch, Chamarajpet, Bangalore. The said cheque, when it was presented for realization, was returned with the endorsement "account closed". After issuing the statutory notice, the complainant had filed a complaint under Section 138 of the Negotiable Instruments Act in C.C. No.40274/2002 before the XVIII ACMM & XX ASCJ, Bangalore City.

G 4. The Trial Court by its judgment dated 27.04.2004 acquitted the appellant/accused on the ground that the complainant has not proved the

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case beyond reasonable doubt as the documentary and also the oral A
evidence adduced by the appellant/accused substantiates the defence
plea of the accused. Being aggrieved, the said complainant preferred
appeal before the High Court in Criminal Appeal No.895 of 2004, in and
by which the High Court reversed the acquittal and convicted the
appellant as aforesaid in paragraph (2). Being aggrieved, the appellant/
accused is before us in this appeal by way of special leave. B

5. When the special leave petition came up for hearing, by order
dated 12.05.2011 this Court had granted stay on condition that the
appellant herein should deposit an amount of Rs.3,00,000/- (Rupees Three
Lacs) before the Trial Court i.e. the Court of Small Causes and ACMM,
Bangalore, which has been duly complied with. The matter was lingering C
on file for quite some time. When the matter came up for hearing today
i.e. on 27.03.2017, the son of the appellant, by name Srinivasan, was
present in the Court. Respondent No.4/Abdul Kaleem, was present in
the Court, who stated that he is representing all the legal representatives D
of complainant/Mohammed Hyath. We suggested to the parties and to
their counsel whether they can talk to each other to arrive at an amicable
settlement, for which both the parties as well as Ms. Lata Krishnamurti
and Mr. A.T.M. Sampath, learned counsel appearing for the parties readily
agreed.

6. After talking to each other the parties have arrived at a E
settlement for a sum of Rs.6,00,000/-(Rupees Six Lacs) including the
amount of Rs.3,00,000/-(Rupees Three Lacs) already deposited before
the Trial Court.

7. In the result, the impugned judgment of the High Court rendered
in Criminal Appeal No.895 of 2004 is set aside and this appeal is allowed. F
The appellant is acquitted of the charge under Section 138 of the
Negotiable Instruments Act.

8. The respondents are permitted to withdraw Rs.3,00,000/-
(Rupees Three Lacs) deposited before the Court of Small Causes and
A.C.M.M. Court, Bangalore forthwith, along with the accrued interest, G
on filing necessary application.

9. The appellant is granted three months' time from today to pay
to the respondents a further sum of Rs.3,00,000/- (Rupees Three Lacs)
by way of demand draft in favour of Abdul Kaleem. The appellant H

- A** (represented by his son) is directed to file affidavit of undertaking to this effect before this Court within a period of one week. On failure to pay the said amount of Rs.3,00,000/- (Rupees Three Lacs) within the time granted, the appellant shall be proceeded with for contempt, in addition to the other proceedings, in accordance with law.
- B** 10. Pending applications, if any, shall stand disposed of.

Ankit Gyan

Appeal allowed.