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Advocates & Consultants

NEWSLETTER

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JUDGEMENTS

1. Kalamani Tex and Ors. Vs. P. Balasubramanian

**Blank cheque leaf would attract presumption under Section 139 of the Negotiable Instruments Act, 1881, when signatures are admitted by the Accused—
Supreme Court of India**

The brief facts are that the Appellant No. 1 and its managing partner (Appellant No. 2) are in appeal challenging the judgment passed by the High Court, whereby the order of acquittal of the Judicial Magistrate, was reversed and the Appellants have been convicted under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act'). Consequently, the Appellant No. 2 has been sentenced to undergo three months Simple Imprisonment and a fine of Rs. 5,000. The short question which falls for consideration is whether the High Court erred in reversing the findings of the trial Court in exercise of its powers under Section 378 of Code of Criminal Procedure, 1973 (CrPC).

It is true that, the High Court would not reverse an order of acquittal merely on formation of an opinion different than that of the trial Court. It is also trite in law that, the High Court ought to have compelling reasons to tinker with an order of acquittal and no such interference would be warranted when there were to be two possible conclusions. There are numerous decisions of this Court, justifying the invocation of powers by the High Court under Section 378 Code of Criminal Procedure, if the trial

Court had, committed a patent error of law or grave miscarriage of justice or it arrived at a perverse finding of fact.

The trial Court completely overlooked the provisions and failed to appreciate the statutory presumption drawn under Section 118 and Section 139 of NIA. The Statute mandates that, once the signature(s) of an Accused on the cheque/negotiable instrument are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the Accused to discharge the presumption imposed upon him.

Once the 2nd Appellant had admitted his signatures on the cheque and the Deed, the trial Court ought to have presumed that, the cheque was issued as consideration for a legally enforceable debt. The trial Court fell in error, when it called upon the Complainant-Respondent to explain the circumstances under which the Appellants were liable to pay.

There has been an admitted business relationship between the parties, the defence raised by the Appellants does not inspire confidence or meet the standard of 'preponderance of probability'. In the absence of any other relevant material, it appears that the High Court did not err in discarding the Appellants' defence and upholding the onus imposed upon them in terms of Section 118 and Section 139 of the NI Act.

The Hon'ble Apex Court observed that *"19. Considering the fact that there has been an admitted business relationship between the parties, we are of the opinion that the defence raised by the appellants does not inspire confidence or meet the standard of 'preponderance of probability'. In the absence of any other relevant material, it appears to us that the High Court did not err in discarding the appellants' defence and upholding the onus imposed upon them in terms of Section 118 and Section 139 of the NIA.*

20. As regard to the claim of compensation raised on behalf of the respondent, we are conscious of the settled principles that the object of Chapter XVII of the NIA is not only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for dishonour of cheque as well as civil liability for realisation of the cheque amount. It is also well settled that there needs to be a consistent approach towards awarding compensation and unless there exist special circumstances, the Courts should uniformly levy fine up to twice the cheque amount along with simple interest at the rate of 9% per annum.”

Link:

https://main.sci.gov.in/supremecourt/2017/42005/42005_2017_32_1501_26011_Judgement_10-Feb-2021.pdf

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Magnum Lex, Advocates & Consultants

Office No. 101, A-32, First Floor, Patparganj, Mayur Vihar-Phase 1, Near
Una Enclave, Delhi-110091

Email Id: info@magnumlex.com , magnumlex123@gmail.com

Website: www.magnumlex.com