

M/S V.G. SARAF AND SONS

V.

H. RANJITH AND ANR.

Criminal Appeal No. 468 of 2009

MARCH 16, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY,
JJ.]

Negotiable Instruments Act, 1881:

s.138 – Conviction under s.138 set aside by High Court on ground that amount shown in the bill was lesser than the cheque amount – Challenged by complainant – Documents produced by complainant to substantiate contention that cheque was issued to discharge the liability which included cash discount and sales tax – Held: High Court did not examine the matter in proper perspective – Probative value of documents produced and acceptability of evidence of complainant was not examined – Matter remitted to High Court for fresh disposal.

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 468 of 2009

From the Judgement and Order dated 12.07.2007 of the
High Court of Kerala C.R.P. No. 1740 of 2002(C)

Romy Chacko, for the Appellant.

P.V. Dinesh, T.T.K. Deepak, M/S. T.T.K. Deepak & Co., for
the Respondent.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a

A learned Single Judge of the Kerala High Court allowing the Revision Petition filed by the respondent No.1 questioning his conviction for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short the 'Act'). The High Court held that the conviction entered and the sentence imposed by the Courts below were not sustainable and accordingly allowed the revision petition.

3. The primary stand of the appellants in this appeal is that the High Court erred in acquitting the accused on the ground that Ex.P6, Bill represents only for Rs.1,61,000/- and that the Ex.P1 cheque was for a sum of Rs.1,86,606.95. It is pointed out that the evidence of PW-1 the complainant was to the effect that accused was liable to pay a sum of Rs.1,81,256.75 and the cash discount and sales tax. It is the case of the appellants that the High Court misread the evidence of PW-1 to set aside the concurrent findings recorded by the courts below.

4. Learned counsel for the respondent No.1 on the other hand supported the judgment of the High Court.

5. It is noticed that the evidence of PW-1 was to the effect that the accused was liable to pay Rs.1,81,256.75 and the cash discount and the sales tax. It is also seen that the appellants had produced the relevant documents to substantiate the contention that the cheque in question was issued to discharge the liability. The documents produced included the invoices, ledger and bills.

6. It is noticed that the High Court has not examined the matter in proper perspective. The probative value of the documents produced and the acceptability of the evidence of PW-1 has not been examined. That being so, we set aside the impugned order of the High Court and remit the matter to it to consider the matter afresh taking into account the various aspects highlighted above.

7. The appeal is allowed.