

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1214-1215 OF 2019
(Arising out of SLP(CrI) Nos.2990-2991/2019)

RAJENDRA .. APPELLANT(S)

VERSUS

NAND LAL .. RESPONDENT(S)

O R D E R

1. Leave granted.
2. These appeals arise out of judgment dated 31.08.2018 in Criminal Appeal Nos. 588 and 589 of 2018 by which the High Court has set aside the judgment passed by the Trial Court, wherein the appellant had been acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (For Short, the N.I. Act).
3. The respondent has filed the compliant under Section 138 of the N.I. Act based on two cheques:- for Rs. 7,80,000/- dated 28.05.2014 and Rs. 5,80,000/- dated 28.06.2014, alleging that when presented for collection, the cheques were returned with endorsement "insufficient funds". The Trial Court vide its judgment dated 28.10.2015 acquitted the appellant by holding that the respondent-

complainant had not proved that the cheques were issued for discharging legally enforced debt. The Trial Court also held that no documents were placed on record to show that the appellant was the partner of Avadh Infrastructure and that the respondent-complainant had not established that the disputed cheques were issued for discharging the legally enforced debt. The Trial Court acquitted the appellant. Appeal filed by the respondent-complainant was allowed by the High Court vide the impugned judgment. By the impugned judgment, the High Court has convicted the appellant under Section 138, N.I. Act and sentenced the appellant to undergo imprisonment for two years. Additionally, the High Court has also imposed the fine of Rs. 15,60,000/- (qua the cheque for Rs. 7,80,000/-) and imposed fine amount of Rs. 11,60,000/- (qua the cheque for Rs. 5,80,000/-) with default clause. Being aggrieved, the appellant preferred these criminal appeals.

4. During the pendency of the matter before this Court, both parties have amicably settled the matter. The mutual settlement agreement dated 19.03.2019 came to be executed between the appellant and the

respondent. The learned counsel appearing for the appellant has submitted that pursuant to the settlement dated 19.03.2019, the appellant Rajendra has paid a sum of Rs.2,00,000/- in the account of the respondent through RTGS which was accepted by the respondent. It is also stated that on 19.03.2019, the appellant had paid the sum of Rs. 10,00,000/- to the respondent vide demand draft bearing No. 316507, dated 19.03.2019 drawn from Bank of India, Anand Nagar Branch, Nagpur.

5. Learned counsel appearing for the appellant submitted that in view of the compromise arrived at between the parties, the conviction of the appellant under Section 138 of N.I. Act is to be set aside and the appellant is entitled to an acquittal. The learned counsel for the appellant has drawn our attention to the case of Damodar S. Prabhu vs. Sayed Babalal H., (2010) 5 SCC 663 and submitted that in cases arising under Section 138, N.I. Act where the parties are compromising the matter this Court has issued the guidelines as to the levy of costs depending upon stage of the compromise arrived at between the parties. The learned counsel for the appellant has submitted that in the special facts

and circumstances of the case, the Court can waive the costs to be levied. As discussed earlier, in the present case, the appellant, accused was acquitted by the Trial Court *inter alia* on the ground that the respondent had not established that there was a legally enforceable debt. Since the appellant was convicted only in the High Court, the appellant had substantial ground to raise in the criminal appeal filed before this Court. Because of the reversal of the acquittal by the High Court and the conviction recorded only by the High Court, the appellant had opportunity of negotiating for settlement in this Court after filing the appeal. In such facts and circumstances of the case, this is not a case where cost is to be imposed, as per the guidelines laid down by this Court as per the judgment reported in (2010) 5 SCC 663 (supra).

6. In view of the settlement arrived at between the parties, the conviction of the appellant under Section 138, N.I. Act in Criminal Appeal Nos. 588 and 589 of 2018 is set aside and the appellant is acquitted of the charges under Section 138 of the N.I. Act. The statement of the learned counsel for the parties that both parties have mutually agreed to

withdraw all the cases filed against each of them is recorded.

7. The appeals are allowed accordingly.

.....J.
[R. BANUMATHI]

.....J.
[A.S. BOPANNA]

NEW DELHI,
AUGUST 06, 2019.

ITEM NO.26

COURT NO.7

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s). 2990-2991/2019

(Arising out of impugned final judgment and order dated 31-08-2018 in CRLA No. 588/2018 31-08-2018 in CRLA No. 589/2018 passed by the High Court Of Judicature At Bombay At Nagpur)

RAJENDRA

Petitioner(s)

VERSUS

NANDLAL

Respondent(s)

Date : 06-08-2019 These petitions were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI

HON'BLE MR. JUSTICE A.S. BOPANNA

For Petitioner(s) Mr. Pratik R. Bombarde, AOR
Mr. Jitendra Kumar, Adv.

For Respondent(s) Mr. Aakarsh Kamra, AOR

Upon hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

[CHARANJEET KAUR]
A.R. - CUM - P.S.

[NISHA TRIPATHI]
COURT MASTER

[Signed order is placed on the file]