

Kajal Vs. Marwah

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Court : Delhi

Decided On : Mar-27-2014

Judge : V. K. Jain

Appellant : Kajal

Respondent : Marwah

Advocate for Pet/Ap. : Mr. Vineet Sharma, Mr. M.S. Vinaik, Mr. Vineet Sharma, Mr. M.S. Vinaik, Mr. Vineet Sharma, Mr. M.S. Vinaik, Mr. Vineet Sharma, Mr. M.S. Vinaik, Mr. M.S. Vinaik, Mr. M.S. Vinaik, Mr. Vineet Sharma, Mr. M.S. Vinaik, Mr. M.S. Vinaik, Mr. M.S. Vinaik, Mr. Vineet Sharma

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

27. 03.2014 + CRL.A. 870/2013 KAJAL Appellant Through: versus Mr. M.S. Vinaik, Adv. MARWAH Respondent + Through: Mr. Vineet Sharma, Adv. Through: versus Mr. M.S. Vinaik, Adv. Through: Mr. Vineet Sharma, Adv. Through: versus Mr. M.S. Vinaik, Adv. Through: Mr. Vineet Sharma, Adv. CRL.A. 1520/2013 KAJAL Appellant VIKAS MARWAH Respondent + CRL.A. 1521/2013 KAJAL Appellant VIKAS MARWAH Respondent + CRL.A. 1522/2013 KAJAL Appellant Through: versus Mr. M.S. Vinaik, Adv. VIKAS MARWAH Respondent Through: + Mr. Vineet Sharma, Adv. CRL.A. 1524/2013 KAJAL Appellant Through: versus Mr. M.S. Vinaik, Adv. VIKAS MARWAH

Respondent Through: + Mr. Vineet Sharma, Adv. CRL.L.P. 348/2013
Petitioner KAJAL Through: Mr. M.S. Vinaik, Adv. versus VIKAS MARWAH
Respondent Through: Mr. M.S. Vinaik, Adv. + CRL.A. 1523/2013 KAJAL
Appellant Through: versus Mr. M.S. Vinaik, Adv. VIKAS MARWAH
Respondent Through: Mr. Vineet Sharma, Adv. CORAM: HON'BLE MR. JUSTICE
V.K. JAIN JUDGEMENT V.K. JAIN, J.

(Oral) The case of the appellant/complainant in nutshell is that the respondent/accused took several loans from her from time to time, the total amount of the loan given to him being Rs 10,40,000/-. This is also the case of the complainant/appellant that the respondent/accused issued several cheques drawn on Canera Bank, Raja Garden, New Delhi towards payment of the aforesaid loan amount. The cheques, when presented to the bank, were dishonoured for want of payment. After serving statutory notice upon the respondent/accused, the appellant/complainant filed as many as nine complaints against the respondent/accused under Section 138 of Negotiable Instruments Act.

2. The Trial Court, having held that the respondent had issued the cheques in question in discharge of a debt or a liability and finding that the cheques were dishonoured when presented to the bank and the respondent/accused did not make payment of the cheque amount, despite receipt of legal notice, convicted him under Section 138 of Negotiable Instruments Act.

3. Being aggrieved from his conviction, the respondent/accused preferred appeals before the learned Additional Sessions Judge, who vide impugned order dated 27.04.2013 held that the existence of a legally enforceable debt or liability was doubtful and accordingly set aside the order passed by the Trial Court and acquitted the accused/respondent. Being aggrieved from the aforesaid order, the complainant is before this Court by way of the aforesaid appeals.

4. During her cross-examination, the complainant, inter alia, stated that she had borrowed money from her sisters, namely, Anita and Rekha and had also taken a sum of Rs 2.80 lakhs from Md. Zakir. She also admitted that she was maintaining accounts with Indian Overseas Bank, Rajouri Garden and Canera Bank, Raja Garden. Though she claimed to be an income-tax assessee, no income-tax return

was produced by her. In his deposition, the respondent/accused Vikas Marwah admitted having signed the cheques in question and giving them to the complainant/appellant. He, however, claimed that the cheques were blank and were not filled up by him on the date they were handed over to the complainant. He also admitted that the aforesaid cheques were dishonoured for want of sufficient funds.

5. Thus, in a nutshell, the case of the complainant/appellant is that she had advanced a loan of Rs 10,40,000/- which the respondent did not return to her, whereas the case of the respondent is that he has taken a loan of Rs. 3,00,000/- from her and he returned a total sum of Rs 3.5 lakhs, inclusive of interest.

6. Neither in the complaints nor in her depositions did the complainant gave details of the loan which she claims to have given, such as the exact amount of each loan, the date on which it was paid and the rate of interest agreed to be paid to her. There is no valid explanation for not giving all such details.

7. Admittedly, the respondent before this Court is not the only person to whom loan is alleged to have been given by the complainant. Admittedly, the complainant had filed complaints under Section 138 of Negotiable Instruments Act against Smt. Gomti Dutta and Keshvi Dutta. She claims to have given loans to them. It would be difficult, in the facts and circumstances of the case, to believe that she kept on giving loan to several persons, despite not having enough fund with her, for this purpose.

8. In her cross-examination dated 04.04.2007 recorded in CC No.732/2009, the complainant/appellant inter alia stated that the sum of Rs.5,80,000/- which she paid to the respondent/accused at one go was arranged by her from one Mr Jacky and her sisters Smt. Anita and Rekha Saini. She claimed to have taken Rs 1.5 lakh each from her sisters and Rs2.80 lakh from Mr Jacky. She admitted that both her sisters are housewives. She claimed that her sisters arranged the money by taking loan from one Saini Society out of their Crl. A. No.870, 1520 to 1524 of 2013 and Crl.L.P. No.348 of 2013 personal savings. Page 5 of 11 The complainant/appellant did not produce either of her sisters or Mr Jackey, to prove the loan alleged to have been taken by her from them. Therefore, her deposition in

this regard remained unsubstantiated. Even otherwise, it would be difficult to accept that the complainant would have raised loan from several persons, not for her personal needs, but for advancing loan to the respondent from time to time. In the normal course of human conduct, no one is likely to take obligation of others just to give loan to another person, unless he/she obtains a substantial advantage, by undertaking exercise of this nature. He/she would know that even if the person whom he/she lends money does not return the loan amount, she would have to return the loan, to the persons from whom it is taken. Therefore, he/she wont take such a risk, except for strong reasons.

9. According to complainant, even her sisters had raised loan from a society for advancing money to her. It would be difficult to believe that the sisters of the complainant would have incurred liability towards a society, to extend a loan to the complainant, not for her personal need, but for lending that amount to a person who is stranger to them. Moreover, there is no explanation for not producing the aforesaid persons in the witness box.

10. In view of the facts & circumstances as discussed earlier, it would be difficult to accept the case of the complainant/appellant that she had advanced a loan of Rs.10.40 lakh to the respondent. However, it is respondents own case that he had taken a loan of Rs.3.00 lakh from the complainant/appellant. According to the respondent he had returned the aforesaid amount to the appellant/complainant. The alleged repayment is sought to be proved relying upon a diary, a copy of which is Ex.CW1/DX. The said diary is in the hand of the father of the respondent. Though the case of the respondent is that the aforesaid diary bears the signature of the appellant/complainant Kajal, there is no evidence to prove the alleged signature of the complainant/appellant on the aforesaid document. In her cross-examination, the complainant/appellant has nowhere admitted that the aforesaid diary bears her signature. She only admitted that it was a diary which belongs to the father of the respondent who was engaged in the business of building material and property dealing. No handwriting expert was examined by the respondent to prove the alleged signatures of the complainant/appellant on the aforesaid document. Since, the respondent has failed to prove that the aforesaid document bears signature of the complainant/appellant, any reliance on it for the purpose of

proving the alleged repayment would be wholly misplaced.

11. Had the respondent repaid the loan amount of Rs.3.00 lakh as claimed by him he would have either taken a receipt clearly acknowledging the receipt of the payments made by him from time to time or he would have taken back the cheques which he had issued to the complainant/appellant. The learned counsel for the respondent submits that since the parties had cordial relations with each other and the respondent is residing in the same house in which the complainant is residing he did not insist on taking the cheques back from her. submission. I, however, find myself unable to accept the The appellant/complainant did not extend loan to the respondent without taking cheques from him. Therefore, the respondent while returning the said loan would certainly have insisted on taking back the cheques which he had issued to the complainant/appellant. In these circumstances, I am of the considered view that though the appellant/complainant has failed to prove that she had advanced loan to the extent of Rs.10.40 lakh, the evidence which has come on record clearly shows that she had advanced a loan of at least Rs.3.00 lakh to the respondent which he is yet to repay. Therefore, it cannot be said that the cheques which the respondent had issued to the complainant/appellant were wholly without any consideration.

12. It is next contended by the learned counsel for the respondent that the appellant/complainant is a money lender since she had advanced loan not only to the respondent but also to other persons, namely, Smt. Gombi Dutta and Ms. Keshvi Dutta. He has also pointed out that admittedly as many as 24 complaints under Section 138 of the Negotiable Instruments Act were filed by the appellant/complainant, besides a suit under Order 37 of the Code of Civil Procedure. In my view, even if the appellant/complainant was engaged in lending money, that would not debar her from filing a complaint under Section 138 of the Negotiable Instruments Act, if a cheque issued to her towards repayment of the loan advanced by her is dishonoured by the bank for want of funds and the drawer of the cheques fails to make payment within the prescribed time, after receipt of legal notice from the lender. Section 3 of the Punjab Registration of Money Lenders Act, 1938, which applies to Delhi, to the extent it is relevant provides that notwithstanding anything contained in any other enactment for the time being in

force, a suit by a money lender for the recovery of a loan shall, after the commencement of the Act, be dismissed unless the money lender at the time of institution of the suit is registered and holds a valid license or holds a certificate from the Commissioner granted under Section 11 of the Act, specifying the loan in respect of which the suit is instituted or if he is not already a registered or licensed money lender, he satisfies the court that he has applied for such registration or license but the application is pending. The aforesaid provision does not debar a money lender from instituting a complaint under Section 138 of the Negotiable Instruments Act, 1881, which is a remedy enforceable before a criminal court, and totally independent of a civil suit. The criminal liability is incurred only in case a cheque is issued in discharge of a debt or other liability, the said cheque is dishonoured for want of funds and the borrower fails to make payment of the amount of the cheque even after receipt of a notice from the lender.

13. For the reasons stated hereinabove, the impugned order dated 27.4.2013, passed by the learned Additional Sessions Judge cannot be sustained.

14. In the facts & circumstances of the case, the respondent is convicted under Section 138 of the Negotiable Instruments Act, 1881, in all the complaints which are subject matter of these appeals. The learned counsel for the respondent states, on instructions from the father of the respondent who is present in the Court that if, the respondent is sentenced only to pay a fine of Rs.3.00 lakh, in aggregate in all the complaints which are subject matter of these appeals, the respondent undertakes to pay the said amount by way of three monthly instalments of Rs.1.00 lakh each. Considering the undertaking given by the respondent through his counsel, I am inclined to take a lenient view, as far as the sentence is concerned. The respondent is, therefore, sentenced to pay fine of Rs.3.00 lakh or to undergo RI for two (2) years in default. The aforesaid sentence is cumulative for all the complaints subject matter of these appeals. The aforesaid amount shall be paid to the complainant/appellant in three (3) monthly instalments of Rs.1.00 lakh each, falling due on 15.4.2014, 15.5.2014 & 15.6.2014. The appeals stand disposed of accordingly. The LCR be sent back along with a copy of this order. V.K. JAIN, J MARCH 27 2014 BG/bnesh