Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act.

43. In our considered opinion, the High Court patently erred in holding that the burden was on the appellant-complainant to prove that he had advanced the loan and the blank signed cheque was given to him in repayment of the same. The finding of the High Court that the case of the appellant-complainant became highly doubtful or not beyond reasonable doubt is patently erroneous for the reasons discussed above.

44. The appeals are allowed. The judgment and order of the High Court is set aside. The conviction of the respondent under Section 138 of the Negotiable Instruments Act is confirmed. However, the respondent-accused is sentenced only to fine, which is enhanced to Rs. 16 lakhs and shall be paid as compensation to the appellant-complainant. The fine shall be deposited in the Trial Court within eight weeks from the date, failing which the sentence of imprisonment of one year as imposed by the Trial Court shall revive. There shall be no order as to costs.

***Result*:-** Appeals allowed.

ABC 2019 (II) 250 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Dr. Dhananjaya Y. Chandrachud & Hemant Gupta, JJ.)

Criminal Appeal No. 483 of 2019 (Arising out of SLP(Crl.) No. 4608 of 2016) With Criminal Appeal No. 484 of 2019 (Arising Out of SLP(Crl.) No. 4610 of 2016)

(From Madhya Pradesh High Court)

Decided On 13 March, 2019

RIPUDAMAN SINGH ***- Petitioner(s).***

Versus

BALKRISHNA ***- Respondent(s).***

Law Covered*:-** ***(A) Negotiable Instruments Act, 1881 — Section 138 — Cheques were issued in pursuance of the agreement to sell— Held, a payment which is made in pursuance of such an agreement is hence a payment made in pursuance of a duly enforceable debt or liability for the purposes of Sec. 138. (Para 12)

(B) Code of Criminal Procedure, 1973 — Section — 482 — Inherent power of the High Court — Issuance of cheque in pursuance of the agreement to sell — Dishonour — defence of accused — dispute regarding a clause in agreement — Held, cannot be the subject matter of a proceeding u/s 482 and is a matter to be determined on the basis of the evidence which may be adduced at the trial. (Para 14)

Facts:- *The appellants who were spouses, claiming to be owners of certain agricultural land, entered into an agreement to sell with the Respondent. A part of sale consideration was paid in cash and two cheques were issued for the remaining amount. Both the cheques, when deposited for payment, returned unpaid with the remarks "Insufficient funds". After issuing legal notices the appellants instituted complaints u/s 138, NI Act. Process was issued by the JMFC. The respondent filed two separate applications seeking discharge which were dismissed and the charges were framed. The respondent then filed a petition u/s 482 CrPC before the High Court, for quashing of the complaints, which was allowed. Aggrieved appellant filed the present appeal before the honorable Supreme Court, which was allowed, and the order of the High Court was set aside.*

Held:- We find ourselves unable to accept the finding of the learned Single Judge of the High Court that the cheques were not issued for creating any liability or debt, but 'only' for the payment of balance consideration and that in consequence, there was no legally enforceable debt or other liability. Admittedly, the cheques were issued under and in pursuance of the agreement to sell. Though it is well settled that an agreement to sell does not create any interest in immoveable property, it nonetheless constitutes a legally encforceable contract between the parties to it. A payment which is made in pursuance of such an agreement is hence a payment made in pursuance of a duly enforceable debt or liablity for the purposes of Section 138. (Para-12)

The question as to whether there was a dispute as contemplated in clause 4 of the Agreement to Sell which obviated the obligation of the purchaser to honor the cheque which was furnished in pursuance of the agreement to sell to the vendor, cannot be the subject matter of a proceeding under Section 482 and is a matter to be determined on the basis of the evidence which may be adduced at the trial. (Para-14)

Counsel:- ***For Petitioner(s):*** *Mr. Shyam Divan, Mr. Santosh Kumar, Mr. Visushant Gupta, Mr. Mushtaq Ahmad,Advs.*

For Respondent(s): *Mr. Akshat Shrivastava, Ms. Pooja Shrivastava, Advs.*

a

JUDGMENT

DR. DHANANIAVA Y. CHANDRACHUD, J.: - Leave granted.

1. These appeals arise from a judgment of a learned Single Judge of the High Court of Madhya Pradesh at its Bench at Indore dated 31 March 2016. The learned Single Judge has allowed a petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) and quashed the complaints instituted by the appellants under Section 138 of the Negotiable Instruments Act, 1881.

b

2. The appellants are spouses. Claiming to be owners of certain agricultural land they entered into an agreement to sell dated 28 May 2013 with the Respondent. The sale consideration was Rs. 1.75 crores. The agreement records that an amount of Rs. 1.25 crores was paid in cash and as for the balance, two post dated cheques were issued, each in the amount of Rs 25 lakhs.

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3. The cheques were issued by the respondent in favour of the two appellants in the present appeals. The details of the cheques are as follows:

(i) Cheque No. 297251 dated 03.06.2013 drawn on Indusind Bank, Indore for an amount of Rs. 25,00,000/- (Rupees twenty-five lacs only) favouring Ripudaman Singh;

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(ii) Cheque No. 297252 dated 02.07.2013 drawn on Indusind Bank, Indore for an amount of Rs. 25,00,000/- (Rupees twenty-five lacs only) favouring Smt. Usha.

4. Together with the agreement, the appellants executed a General Power of Attorney in favour of the respondent. The first of the two cheques was deposited for payment. On 18 June 2013 it was returned unpaid with the remarks "Insufficient funds". The second cheque dated 2 July 2013 was returned with the same remark by the banker, upon deposit.

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5. After issuing legal notices dated 21 June 2013 and 13 August 2013, the appellants instituted complaints under Section 138 of the Negotiable Instruments Act, 1881. Process was issued by the Judicial Magistrate, First Class.

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6. The respondent filed two separate applications seeking discharge in the respective complaint cases. Those applications were

dismissed by the Judicial Magistrate, First Class, Indore on 3 September 2014. On 8 October 2014, charges were framed under Section 138.

7. The respondent then filed a petition under Section 482 CrPC before the High Court in which the impugned order has been passed. While allowing the complaint, the High Court has adverted to Clause 4 of the agreement between the parties which is in the following terms:

> "That on the above property of the seller there is no family dispute of any type nor is any case pending in the court. If due to any reason any dispute arises then all its responsibility would remain of the selling party and the payment of cheques would be after the resolution of the said disputes."

8. The High Court held that a suit in respect of the land, Civil Suit No. 4-A of 2012 is pending before the XIVth Additional Sessions Judge, Indore since 2 September 2011 in which the complainants are arraigned as parties.

9. On this basis, the High Court held that under the terms of clause 4 of the agreement, the cheques could not have been presented for payment. The cheques, according to the High Court, have not been issued for creating any liablity or debt but for the payment of balance consideration. Holding that the respondent did not owe any money to the complainants, the complaint under Section 138 have been quashed.

10. Assailing the judgment of the High Court, Mr. Shyam Divan, learned senior counsel submits that as a matter of fact, acting on the strength of the General Power of Attorney which was issued by the appellants in both the cases, the respondent entered into a sale transaction in respect of the same property on 3 August 2013 for a total consideration of Rs. 3.79 crores. Hence, it has been submitted that the order passed by the High Court is manifestly misconceived.

11. On the other hand, learned counsel appearing on behalf of the respondent submitted that clause 4 of the agreement to sell postulated that there was no dispute in respect of the land which was the subject of the agreement to sell nor was there any case pending before the Court. Moreover, it was stated that if a dispute was to arise, it was the duty of the vendor to get it resolved and the payment of cheques would be after the resolution of the dispute.

12. We find ourselves unable to accept the finding of the learned Single Judge of the High Court that the cheques were not issued for creating any liability or debt, but 'only' for the payment of balance consideration and that in consequence, there was no legally enforceable debt or other liability. Admittedly, the cheques were issued under and in pursuance of the agreement to sell. Though it is well settled that an agreement to sell does not create any interest in immoveable property, it nonetheless constitutes a legally encforceable contract between the parties to it. A payment which is made in pursuance of such an agreement is hence a payment made in pursuance of a duly enforceable debt or liablity for the purposes of Section 138.

13. Moreover, acting on the General Power of Attorney, the respondent entered into a subsequent transaction on 3 August 2013. Evidently that transaction was after the legal notice dated 21 June 2013 and hence could not have been adverted to in the legal notice. Recourse to the jurisdiction of the High Court under Section 482 was a clear abuse of process.

14. The question as to whether there was a dispute as contemplated in clause 4 of the Agreement to Sell which obviated the obligation of the purchaser to honor the cheque which was furnished in pursuance of the agreement to sell to the vendor, cannot be the subject matter of a proceeding under Section 482 and is a matter to be determined on the basis of the evidence which may be adduced at the trial.

15. For these reasons, we are of the view that the order passed by the High Court in the petition under Section 482 CrPC was unsustainable. We allow the appeals and set aside the impugned judgment and order of the High Court.

16. However, we clarify that we have not expressed any opinion on the merits of the issues which may arise during the course of the trial.

The appeals are, accordingly, disposed of.

Pending application(s), if any, shall stand disposed of.

***Result*:-** Appeals allowed.