

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 468 OF 2009
(Arising out of SLP (Crl.) No. 2219 of 2008)

M/s V.G. Saraf and Sons

..Appellants

Versus

H. Ranjith and Anr.

..Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by 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.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
March 16, 2009