

REPORTABLE**IN THE SUPREME COURT OF INDIA****CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 483 OF 2019
(Arising out of SLP(CrI.) No. 4608 of 2016)****RIPUDAMAN SINGH****Petitioner(s)****VERSUS****BALKRISHNA****Respondent(s)****CRIMINAL APPEAL NO. 484 OF 2019
(Arising out of SLP(CrI.) No. 4610 of 2016)****JUDGMENT****Dr. Dhananjaya Y. Chandrachud, J.**

Leave granted.

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, 1973¹ and quashed the complaints instituted by the appellants under Section 138 of the Negotiable Instruments Act, 1881.

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.

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;

(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.

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.

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.

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.

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 petition, 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.”

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.

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 liability 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.

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.

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.

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 enforceable 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 liability for the purposes of Section 138.

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.

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.

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.

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.

.....J.
(DR. DHANANJAYA Y. CHANDRACHUD)

.....J.
(HEMANT GUPTA)

NEW DELHI
MARCH 13, 2019

ITEM NO.1

COURT NO.11

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 (Cr1.) No(s). 4608/2016

(Arising out of impugned final judgment and order dated 31-03-2016 in MCRC No. 356/2015 passed by the High Court Of M.p At Indore)

RIPUDAMAN SINGH

Petitioner(s)

VERSUS

BALKRISHNA

Respondent(s)

WITH

SLP(Cr1) No. 4610/2016 (II-A)

Date : 13-03-2019 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE HEMANT GUPTA

For Petitioner(s)

Mr. Shyam Divan, Sr. Adv.

Mr. Santosh Kumar, Adv.

Mr. Visushant Gupta, Adv.

Mr. Mushtaq Ahmad, AOR

For Respondent(s)

Mr. Akshat Shrivastava, AOR

Ms. Pooja Shrivastava, Adv.

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

Leave granted.

The appeals are disposed of in terms of the signed reportable judgment.

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

(MANISH SETHI)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed reportable judgment is placed on the file)