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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 354/2012

NIRAJ

..... Appellant

Through: Mr. Syed Sajad Ali, Advocate.

versus

RAMESH PRATAP SINGH@ RAJU SINGH Respondent

Through: None.

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Date of Decision: 23rd July, 2012

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J : (Oral)

Crl.M.A. 12668/2012 (exemption) in Crl.L.P.354/2012

Allowed, subject to just exceptions.

Accordingly, the application stands disposed of.

Crl.L.P.354/2012

1. Present leave to appeal has been filed challenging the judgment dated 04th May, 2012 whereby the respondent has been acquitted under Section 138 of the Negotiable Instruments Act, 1881

(hereinafter referred to as 'Act').

2. The relevant facts of the present appeal are that the respondent on 30th June, 2006 took a friendly loan of ₹ 2,60,000/- from the appellant with a promise to repay the same within two months. Respondent issued a cheque towards discharge of the said loan which was dishonoured on the ground of 'insufficient funds' on 30th August, 2006. Hence the present complaint was filed.

3. The respondent's contention before the trial court was that he was informed about the dishonour of cheque on 30th August, 2006. Immediately thereafter he made part payments to the complainant, i.e., ₹ 75,000/- on 04th September, 2006 and ₹ 1,00,000/- on 11th September, 2006 towards the said amount of ₹ 2,60,000/-. Both these payments were deposited in the complainant's account by way of cheques. The rest of the payment was to be made on return of the dishonoured cheque, but the respondent alleged that instead the appellant issued the notice dated 12th September, 2012 under Section 138 of the Act.

4. The aforesaid defence set up by the respondent was accepted by the trial court. The relevant portion of the impugned order is as

under:-

“22. It is the deposition of complainant and contention of counsel for complainant that the said amount of Rs.1,75,000/- was not paid by accused to complainant as part repayment of the alleged loan amount and instead this payment was against ‘some other transaction’ between the complainant and accused. The counsel for complainant specifically questioned the accused as DW1 on this aspect. DW1 in his cross examination deposed that he did not have the detail of each and every financial transaction with the complainant as there were many transactions between them. He deposed that there was no outstanding against him or the complainant before accepting the amount of Rs.2,60,000/-. He denied the suggestion that the amount of Rs.1,75,000/- was paid by him to complainant in some other transaction. He admitted that he had deposited a sum of Rs.1,00,000/- in the account of complainant a month prior to the deposit of Rs.1,75,000/-. He deposed that the said amount also deposited to return the loan which was taken by him but it was some other transaction.

23. The contention of counsel for complainant that Rs.1,75,000 was against the payment of some other transaction appears to be a mere bald averment. It is for reason that the voluntary deposition of complainant during his cross examination that the payment of Rs.1,75,000/- was against the payment of some other transaction came out only after all the questions of defence counsel on that aspect were already over. The prudence required him to volunteer the aspect of ‘some other transaction’ as soon as the first question of part payment of Rs.75,000/- was asked to him. It appears that the voluntary deposition was merely to cover up the adverse impact of his earlier admissions to the questions of payment of Rs.1,75,000/- by accused to him. The

complainant could also not provide any explanation or detail of 'some other transaction' despite his own voluntary deposition that the payment of Rs.1,75,000/- was against that other transaction.

Further, the counsel for complainant could not seek explanation of the aforesaid averment of complainant from accused during his cross examination. DW1 was not questioned even once on the details of 'some other transaction', which were specifically within the knowledge of the complainant himself.

24. The only argument of the counsel for complainant is that the accused had paid a sum of Rs.1,00,000/- to complainant even prior to the dishonor of the impugned cheque in connection with one another monetary transaction between the parties and similarly, the accused paid Rs. 1,75,000/- to the complainant against some other transaction and not against the discharge of part liability of the alleged loan amount.

Although, the accused admits to a number of monetary transactions between him and the complainant, he also claims to have no outstanding payable to complainant out of those transactions except the one in dispute. The complainant has failed to confront the accused with any question or document related to such other transaction against whose discharge the sum of Rs.1,75,000/- was paid to him by accused. Complainant cannot be permitted to conceal a material fact which goes to the root of the present matter.

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27. In the case in hand, since the complainant had already received an amount of Rs.1,75,000/- from complainant, the legal demand notice demanding an

amount of Rs.2,60,000/- i.e. cheque amount was illegal and invalid. Thus, in the absence of 'demand of amount actually payable to recoverable', the legal demand notice issued by complainant to accused becomes illegal, invalid and bad in the eyes of law.

In view of the settled proposition of law that the offence u/s 138 of the Act stands completed and committed only on service of a valid legal demand notice, the offence in the present complaint cannot be deemed who have been completed/committed. Therefore, the factual matrix of the present matter duly falls in sync with the observations of the Hon'ble High Court of Delhi in the aforementioned case.

28. In the opinion of the Court, the aforesaid discussion goes on to establish that accused has rebutted the dual presumptions of law raised against him by the court. At this stage, the burden of proof again shifts to the complainant. Hon'ble Supreme Court in case title M.S. Narayana Menon (supra) held that once the accused is found to discharge his initial burden, it shifts to the complainant.

The complainant has failed to establish on record the advancement of the impugned loan of Rs.2,60,000/- to the accused. The complainant also failed miserably to explain the 'some other transaction' against which the alleged amount of Rs.1,75,000/- was received by him from the accused. Failure to establish both these aspects are fatal to the case of complainant. Hence, ingredient no.1 an 2 stand decided in the favour of accused and against the complainant."

(emphasis supplied)

5. It is settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. The power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused.

6. It is also well settled that the Appellate court should reverse an acquittal only for very substantial and compelling reasons. In the event, two views are possible on the evidence adduced before the trial Court and the view taken by the trial Court is a plausible view, the Appellate Court should not interfere and substitute its own view against the plausible view taken by the trial Court. In fact, the Supreme Court in *Chandrappa & Ors. Vs. State of Karnataka, (2007) 4 SCC 415* while referring to previous cases laid down the following general principles regarding the powers of appellate court while dealing an appeal against an order of acquittal:-

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

7. The Supreme Court in a subsequent judgment in ***Arulvelu & Anr. Vs. State Represented by the Public Prosecutor & Anr., (2009)***

10 SCC 206 has held as under:-

“40. Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court.”

8. In the present case, this Court is of the view that the appellant neither made a full disclosure of all the facts in its complaint nor he produced any document to show that payment of ₹ 1,75,000/- by the respondent was against some other transaction. The appellant also failed to establish that the respondent is under liability to pay under some other transaction. This Court also concurs with the opinion of the trial court that it is highly improbable that a person pursuant to

being informed that the cheque issued by him had been dishonoured would pay to discharge some other liability and not the one for which the cheque bounced.

9. Keeping in view the aforesaid mandate of law as well as the reasoning given by the trial Court in the impugned order, this Court is of the opinion that the impugned order does not call for any interference by this Court.

10. Consequently, present petition is devoid of merits and is dismissed.

MANMOHAN, J

JULY 23, 2012

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