IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-A-1662-MA-2014
Date of decision : 08.01.2015

Jagjit Singh

... Appellant

Versus

Harinder Dhiman

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Vikram Bali, Advocate
for the appellant.

REKHA MITTAL, J.

The present appeal has been directed against the judgment dated 18.07.2009 passed by the Additional Chief Judicial Magistrate, Ropar whereby the complaint filed under Section 138 of the Negotiable Instruments Act 1881 (in short 'the Act') has been dismissed and the respondent-accused is acquitted of the offence charged against him.

As per allegations set up in the complaint, the accused borrowed an amount of Rs.3 lacs for domestic purpose in the month of November 2006 and agreed to return the same within six months. On 05.04.2007, the complainant approached the accused for return of money and he (accused) in discharge of his liabiliy issued cheque in dispute bearing No.360661 dated 05.04.2007 for Rs.3 lacs drawn on Punjab National Bank, Ropar Road, Kurali. The cheque got dishonoured with the remarks “Funds Insufficient”. The complainant served a legal notice through Sh.Suraj Pal Singh, Advocate on 30.04.2007 which was duly replied by the accused. The accused failed to make payment of the cheque amount despite receipt of legal notice.

The learned trial Court came to hold that presumptions available in favour of holder of a Negotiable Instrument including a cheque under Sections 118 and 139 of the Act stood sufficiently rebutted in view of the facts elicited during cross-examination of the complainant, the plea of the accused in reply to the legal notice vide Ex.D15 and reiterated during trial coupled with an adverse inference being liable to be drawn against the complainant for his failure to produce the ledger, cash book, account books and Income tax returns etc. in the light of judgment of this Court ***Ram Avtar Vs. Sushma Kumari and another, 2007(4) CCC, 378.***

Counsel for the appellant would submit that once the accused has admitted his signatures on the cheque in question and the Court is enjoined upon to presume that the cheque had been issued for consideration, it was obligatory for the accused to prove by leading cogent evidence that there was no debt or liability but he failed to do so. It is argued that the learned trial Court committed a serious error in holding in favour of the accused without appreciating that the accused has failed to discharge the burden of disproving case of the complainant. For this purpose, he has relied upon judgments of Hon'ble the Supreme Court of India in ***K.N.Beena Vs. Muniyappan, 2001(4) RCR (Criminal) 545*** and ***C.Keshavamurthy Vs. H.K.Abdul Zabbar, 2013(3) RCR (Criminal) 944.***

I have heard counsel for the appellant and gone through the records.

Apart from the fact that the present appeal has been filed after a delay of 1855 days, I do not find any reason to interfere in the judgment passed by the learned trial Court.

The plea of the complainant-appellant is that an amount of Rs.3 lacs was borrowed by the accused for domestic purpose in the month of November 2006 from Khalsa Finance Company, Chandigarh Road, Kurali of which the appellant-complainant is one of the partners. During cross-examination of the complainant, it has been brought on record that Khalsa Finance Company is running the business since the year 2001 and the firm is an Income Tax Payee and filing income tax returns regularly. The accounts of the firm were audited by a Chartered Accountant. The firm was maintaining books of accounts through its Accountant namely Tara Chand. The complainant despite an opportunity by the Court failed to produce the relevant records in regard to disbursement of loan of Rs.3 lacs in favour of the accused. It is difficult to believe that a finance company or firm would give loan to any person without proper documentation and even getting a security to ensure repayment of the loan amount particularly in the circumstances that the accused allegedly borrowed a huge amount of Rs.3 lacs in the year 2006. The failure of the complainant to produce the relevant records certainly raises an adverse inference against the complainant as has been sought to be raised by the learned trial Court. Not only this, the accused at the first available opportunity raised his defence plea that he never borrowed an amount of Rs.3 lacs and a blank cheque was issued by him when he had taken loan of Rs.40,000/- from Khalsa Finance Company in February 2003 which was repaid by him but the blank cheque was not returned on the pretext that the same has been misplaced.

Counsel for the complainant-appellant has not disputed that the accused had taken a loan of Rs.40,000/- from the finance company and the same was repaid. It was also stated in reply to the notice that the cheques bearing serial numbers subsequent to the serial number of the cheque in dispute were encashed in 2003 and 2004 which indicate and substantiate plea of the accused that the cheque in dispute was issued in the year 2003 which was later misused by the complainant. It has also been proved on record that brother of the accused had litigation with the complainant in regard to some agreement to sell and their relations became strained since the year 2004, thus, ruling out possibility of the accused having been given loan of Rs.3 lacs in the year 2006 without getting executed loan and security documents.

Keeping in view the evidence on record, discussed in detail by the learned trial Court, I have no hesitation to hold that the presumptions available in favour of the complainant have been sufficiently rebutted in the circumstances and, therefore, I do not find any fault in the judgment passed by the trial Court. In view of peculiar facts and circumstances of the present case, the appellant cannot derive any advantage to his contention from the referred authorities.

For the reasons aforesaid, the application for leave to appeal is dismissed. As a natural consequence, the appeal filed by the appellant fails and is accordingly dismissed.

(REKHA MITTAL)
JUDGE

January 08, 2015.
Davinder Kumar