IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-56-MA-2014
Date of decision: 03.03.2015

Sidak Automobiles Private Limited
.... Applicant/Appellant(s)

Versus

Raj Nath Automative
.... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

1) Whether Reporters of the local papers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

Present: Mr. Sumit Gupta, Advocate,
for the applicant.

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PARAMJEET SINGH, J. (ORAL)

The instant application has been filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the impugned judgment dated 07.10.2013 passed by learned Judicial Magistrate Ist Class, Karnal whereby complaint filed by applicant under Sections 138/142 of the Negotiable Instruments Act (in short, 'the Act') has been dismissed and respondent has been acquitted of the notice of accusation issued against him.

Brief facts of the case are that a complaint was filed by the applicant-complainant under Sections 138/142 of the Act alleging that the applicant through its Managing Director, Tejwant Singh, deposited a sum of Rs.36,31,946/- with the accused as a part payment for purchase of two Mercedes Cars uptill 14.12.2007. However, the respondent instead of purchasing cars, used the said money for his own purpose. The accused did not buy the Mercedes cars for complainant within the stipulated time bound and kept on postponing the matter on one pretext or the other. Finally, the accused admitted his failure to buy cars for the complainant and preferred to return the money to the complainant. The accused admitted his liability to pay the principal amount, interest accrued thereupon and difference of Euro rate and issued the cheques to discharge his liability. Out of these cheques, cheque No.0704677 dated 20.05.2008 for Rs.6,31,946/- drawn at Corporation Bank New Delhi, in favour of the complainant was returned unpaid vide memo dated 11.7.2008 with remarks "Stop Payment". The bankers of the complainant intimated the complainant regarding the dishonouring of cheque on 13.7.2008. Thereafter, statuary legal notice dated 25.7.2008 was served upon the accused through registered post whereby he was called upon to make the payment of the cheque amount but the accused failed to make the payment within the stipulated period of 15 days and hence the complainant filed the complaint.

On the basis of preliminary evidence, notice of accusation for commission of an offence punishable under Section 138 of the Act was served upon the accused-respondent to which he pleaded "not guilty" and claimed trial.

The complainant, in order to prove its case, examined Chand Ram, official of Punjab National Bank as CW 1, Parkash Yadav, official of Corporation Bank, New Delhi as CW 2 and Tejwant Singh, Managing Director of the Company as CW 3. Thereafter, statement of the respondent-accused under Section 313 Cr.P.C. was recorded wherein he pleaded complete innocence and false implication.

The trial Court, after appreciating the evidence, acquitted the respondent of the notice of accusation, served upon him, vide impugned judgment dated 07.10.2013. Hence, this application for grant of leave to appeal.

I have heard learned counsel for the applicant and gone through the impugned judgment.

The trial Court, after appreciating the evidence on record, observed as under:-

> *"11. From the perusal of the evidence available on record, it is observed that the complainant has alleged that the accused issued the cheque Ex.CW 1/A to him but on presentation for encashment, the same was dishonoured vide memo Ex.CW1/B. Thereafter, registered legal notice Ex.CW3/E was issued to the accused for payment within the prescribed period of limitation as is evident from the postal receipt Ex.CW3/D. A perusal of the aforesaid documents clearly*

show that the present complaint has been filed within the prescribed period of limitation, therefore, there is no dispute in respect of maintainability of the complaint.

12. It is a well settled law that the court should proceed with the presumption that whenever a cheque is issued by a person, such cheque was received for the discharge of a legally enforceable debt or other liability until the drawer proves that it is not so. So, in view of Section 139 of the Act, the burden to rebut the presumption lies upon the accused failing which it becomes clear that the cheque was given by the accused to complainant in discharge of his liability.

13. It is well settled by now that whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

14. It is also well settled that to rebut the presumption, the accused is not entitled to lead any evidence or examine himself as a witness and he can do so by elucidating sufficient material from the evidence of the complainant itself to prove his defence.

15. Now the onus was upon the accused to raise a probable defence against the presumption raised under Section 139 of Negotiable Instruments Act in favour of the complainant & against him. To raise a probable defence, the accused has taken the following plea:-

"There is no document on record wherein he & complainant had agreed to the effect that he would be liable to return principal amount alongwith interest to be calculated @ 18% per annum, as deposed by the complainant in his cross-examination. Even in the document Ex.CW 3/F, rate of interest has nowhere been mentioned and by this time, the rate of interest was also not fixed between them. He had mentioned of his own and not on the demand of the complainant that he would pay the interest, if the complainant wishes so. Meaning thereby, it cannot be inferred upon the contents of the documents Ex.CW3/F that he was required to repay the amount along with interest @ 18% and as such he was never liable to pay Rs.6,31,946/- as the interest accrued on the principal amount. The payment of the cheque in question has already been received by the complainant vide cheques Ex.DW 2/A, Ex.DW 2/B & Ex.DW 2/C. Therefore, there is nothing due towards him and the cheque in question is not supported by a consideration of Rs.6,31,946/-."

16. The Court has carefully gone through the entire evidence led by the complainant as well as accused, cross-examination of the complainant recorded on 30.4.2011 and the statement of accused recorded under Section 313 Cr.P.C.

17. The facts regarding which there is no dispute have been mentioned as follows:

"The accused was paid an amount of Rs.36,31,946/- by the complainant as part payment for the purchase of two Mercedes Cars. The cars were not arranged and the accused had issued cheques to return

the said amount to the complainant. All the cheques, except the cheque in question, were duly encashed when presented for encashment." Regarding the consideration of cheque in question, the stand of the complainant was that this amount was found due towards the accused after the interest was calculated upon the principal amount at the rate of 18% per annum for a period of one and half years and he has further stated that he had made a mention of this fact in his complaint as well as other documents (specifically stated by complainant in his cross-examination). On the other hand, the stand of the accused was that he was never liable to pay any interest to the complainant on the principal amount. The cheque in question was issued by him in discharge of the remaining part of principal amount and he had paid the cheque amount to the complainant vide cheques Ex.DW 2/A to Ex.DW 2/C prior to the serving of legal notice upon him by the complainant regarding dishonouring of cheque in question. Hence, the cheque in question is no more supported by any consideration.

18. The main document which would help the Court in deciding, if the accused was under a liability to pay any interest upon the principal amount to the complainant or not, is document Ex.CW 3/F as the complainant has based his entire claim on this very document. The complainant has categorically deposed in his cross-examination that the amount of interest was finalized between them telephonically and in pursuance of the same the accused had sent a reply/letter Ex.C7 (Ex.CW 3/F) to him. After careful perusal of the contents of document Ex.CW 3/F, the Court is of the view that the *accused was only returning the advance paid by the complainant through cheques. It appears from the contents of the document Ex.CW 3/F that the complainant never asked the accused to refund the money along with interest rather the accused of his own had given an option to the complainant that in case the complainant wishes that he pays interest upon the advance due to the delay caused by him then he would pay the same. He has left it with the complainant to decide if the accused was required to pay any interest thereupon. The only logical inferences which can be drawn are that by 15.4.2008 the accused had only intended to return the advance of Rs.36,31,946/- through cheques, complainant never demanded the refund of his money alongwith interest & difference in EURO and the accused only had expressed his desire to pay the interest, if demanded by the complainant. The rate of interest was neither fixed nor required to be paid by the accused by this time, as alleged and deposed by the complainant in his cross-examination. The complainant has used the contents of letter Ex.CW 3/F to his benefit by submitting that the had demanded interest on the principal amount from the accused during telephonic conversation and the accused had agreed to pay the same whereas the document Ex.CW 3/F shows that no rate of interest was fixed by that date and only the accused had expressed his desire to pay interest if demanded by complainant but he was not bound to pay the same by that time. Except letter Ex.CW 3/F, there is no other document on the file which could show that the complainant had demanded the interest from the accused and as such the version of the* *complainant that the accused was liable to refund the money alongwith interest @ 18% per annum cannot be believed. Last but not the least, reply to the legal notice was given by the accused which has been intentionally concealed by the complainant. On being specifically questioned by ld. defence counsel, complainant admitted that he had received the reply given by the accused and he has not tendered the same in the present case. Ld. defence counsel tendered the same as Ex.DX. The existence of reply to legal notice -Ex.DX has not been disputed, therefore, the court can consider the contents of the same to discover the true facts of the case. The accused has specifically mentioned in para no.4 of the reply Ex.DX the details of the cheques vide which he had returned the amount to the complainant. The receiving of an amount of Rs.30,00,000/- by the complainant through cheques has been duly admitted. The total advance given by the complainant was of Rs.36,31,946/-, out of which Rs.30,00,000/- was received by the complainant through cheques, and the last cheque (cheque in question) was of Rs.6,31,946/- which shows that the cheque was issued in discharge of the remaining principal amount and not in discharge of a liability which accrued on the basis of difference in EURO currency and interest calculated at the rate of 18% per annum on the principal amount. From the entire evidence available on the file, it appears that the cheque in question was issued in discharge of remaining liability to return the principal amount and not to discharge the liability which accrued on the basis of difference in EURO currency and interest calculated at the rate of*

18% per annum on the principal amount. After examining the entire case from all possible angles, the court has no hesitation in stating that the present complaint has been drafted in a very clever manner just to charge the accused with a liability of Rs.6,31,946/-.

19. Now to settle the controversy once and for all, the court is required to decide whether the cheque in question was supported by a consideration of Rs.6,31,946/- on the date the cause of action accrued in favour of the complainant as per the provisions of Negotiable Instruments Act or not. In the present case, the total amount required to be repaid by the accused was Rs.36,31,946/-, out of which Rs.30,00,000/- were paid by him through five cheques. Meaning thereby, an amount of Rs.6,31,946/- was still due towards the accused out of the total principal amount of Rs.36,31,946/-. In addition to this, the complainant has also admitted in the opening lines of his cross-examination that the accused was required to pay Rs.36,31,946/- to him out of which Rs.30,00,000/- were paid to him vide cheques and the remaining cheque (cheque in question) of Rs.6,31,946/- was dishonoured on the ground of Stop Payment. The only possible inference which can be drawn is that the cheque in question was issued by the accused in discharge of his remaining liability to pay the principal amount of Rs.6,31,946/-. Now the cheque in question was dishonoured on 19.7.2008 and the legal notice was served upon the accused on 25.7.2008 as evident from postal receipt Ex.CW 3/B. The payment of Rs.6,00,000/- was made by the accused vide Ex.DW 2/A cheque *no.716642 dated 13.6.2008 of Rs.1,00,000/-, Ex.DW 2/B cheque No.716638 dated 8.6.08 of Rs.2,00,000/- and Ex.DW 2/C cheque no.720025 dated 3.6.2008 of Rs.3,00,000/-. Meaning thereby, the amount of Rs.6,00,000/- was paid to the complainant by the accused well before the legal notice regarding dishonour of cheque in question was served upon the accused by the complainant. The amount of Rs.6,00,000/- had already been paid by the accused and in absence of any proof that he was liable to pay interest to the complainant, the court is of the view that the cheques Ex.DW 2/A to Ex.DW 2/C were issued to discharge the liability of cheque in question.*

Hence, the Court is of the view that the cheque in question was not supported by a consideration of Rs.6,31,946/- on the date the cause of action accrued in favour of the complainant against the accused.

20. In view of the aforesaid discussion and findings, the Court is of the view that the accused has successfully raised a probable defence against the presumption under Section 118 & 119 of the Negotiable Instrument Act and accordingly the same stands rebutted. On the other hand, complainant has failed to proved his case that the accused has issued the cheque in question in discharge of his part legally enforceable debt/liability. Accordingly, the accused is hereby acquitted and exonerated of the notice of accusation u/s 138 of Negotiable Instrument Act. His bail and surety bonds stand discharged. File be consigned to record-room after due compliance."

The Hon'ble Supreme Court in ***Muralidhar @ Gidda & Anr. vs. State of Karnataka*** 2014(2) RCR (Criminal) 507 has held as under:

> *"10.* ***Lord Russell in Sheo Swarup vs. King Emperor [AIR 1934 Privy Council 227]*** *highlighted the approach of the High Court as an appellate court hearing the appeal against acquittal. Lord Russell said, "the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." The opinion of the Lord Russell has been followed over the years.*
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> *11. As early as in 1952, this Court in Surajpal Singh v. State; {AIR 1952 SC 52], while dealing with the powers of the High Court in an appeal against acquittal under Section 417 of the Criminal Procedure Code observed, "the High Court has full power to review the evidence upon which the order of acquittal was founded, but it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial court, and the findings of the trial court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons."*
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> *12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in*

Tulsiram Kanu v. State; [AIR 1954 SC 1], Madan Mohan Singh v. State of U.P.; [AIR 1954 SC 637], Atley v. State of U.P.; [AIR 1955 SC 807], Aher Raja Khima v. State of Saurashtra; [AIR 1956 SC 217], Balbir Singh v. State of Punjab; [AIR 1957 SC 216], M.G. Agarwal v. State of Maharashtra; [AIR 1963 SC 200], Noor Khan v. State of Rajasthan; [AIR 1964 SC 286], Khedu Mohton v. State of Bihar; [(1970) 2 SCC 450], Shivaji Sahabrao Bobade v. State of Maharashtra; [(1973) 2 SCC 793], Lekha Yadav v. State of Bihar; [(1973) 2 SCC 424], Khem Karan v. State of U.P.; [(1974) 4 SCC 603], Bishan Singh v. State of Punjab; [(1974) 3 SCC 288], Umedbhai Jadavbhai v. State of Gujarat; [(1978) 1 SCC 228], K. Gopal Reddy v. State of A.P. ; [(1979) 1 SCC 355], Tota Singh v. State of Punjab [1987(2) R.C.R. (Criminal) 35: (1987) 2 SCC 529], Ram Kumar v. State of Haryana; [1994(3) R.C.R.(Criminal) 631 : 1995 Supp (1) SCC 248], Madan Lal v. State of J&K; [1997(4) R.C.R.(Criminal) 89: (1997) 7 SCC 677], Sambasivan v. State of Kerala; [1998(2) R.C.R.(Criminal) 693 : (1998) 5 SCC 412], Bhagwan Singh v. State of M.P.; [2002(2) R.C.R.(Criminal) 593 : (2002) 4 SCC 85], Harijana Thirupala v. Public Prosecutor, High Court of A.P.; [2002 (3) R.C.R.(Criminal) 861 : (2002) 6 SCC 470], C. Antony v. K. G. Raghavan Nair; [2002(4) R.C.R. (Criminal) 750 : (2003) 1 SCC 1], State of Karnataka v. K. Gopalakrishna; [2005(2) R.C.R.(Criminal) 20 : (2005) 9 SCC 291], State of Goa v. Sanjay Thakran; [2007(2) R.C.R.(Criminal) 458 : (2007) 3 SCC 755] *and* ***Chandrappa v. State of Karnataka; [2007(2) R.C.R. (Criminal) 92: 2007(1) Recent Apex Judgments (R.A.J.) 841: (2007) 4 SCC 415].*** *It is not necessary to deal with* *these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."*

Learned counsel for the applicant has failed to show any error in law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

As such, application for leave to appeal is dismissed on merit.

(PARAMJEET SINGH)
JUDGE

03.03.2015
parveen kumar