IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1827-MA-2014 (O&M)
Date of decision : 15.11.2016

Pritpal Singh

...Petitioner

Versus

Narinder Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: None.

JITENDRA CHAUHAN, J.

The instant revision petition has been filed by the complainant-petitioner, impugning judgment dated 20.08.2014, passed by learned Judicial Magistrate 1st Class, Jalandhar, (for short, 'the trial Court'), whereby, the accused-respondent has been acquitted in complaint case No.5790/2/2009, under Section 138 of the Negotiable Instruments Act.

As per the case of the complainant, the accused raised a loan from him and in order to discharge his liability, he issued a cheque bearing No.078482 dated 04.02.2009 for a sum of Rs.70,000/- in favour of the complainant drawn on State Bank of Patiala, G.T.B. Nagar, Jalandhar. On presentation, the cheque was returned back dishonoured vide memo dated 07.02.2009, with remarks “Insufficient Funds”. The complainant issued a legal notice dated 21.02.2009, upon the accused, calling him to make the payment within stipulated period of 15 days, but the accused failed to make the payment. Hence, the complaint.

Preliminary evidence was recorded and on the basis thereof, accused was summoned to face trial under Section 138 of the Act. Notice of accusation was served upon the accused on 17.09.2010, to which he pleaded not guilty and claimed trial.

In order to prove his case, the complainant entered into the witness box as CW-1 and tendered into evidence his duly sworn affidavit, Ex.CW1/A and proved on record the documents viz. original pronote and receipt as Exs.C1 and C2; written compromise Ex.C3; original cheque as Ex.C4; original memo as Ex.C5; copy of legal notice as Ex.C6; Postal receipt as Ex.C7; and UPC receipt as Ex.C8. He also got examined SM Saini, Single Window Operator, State Bank of Patiala, Guru Teg Bahadur Nagar, Jalandhar as CW2, who produced on record documents i.e. certificate under Banker's Book Evidence Act as Ex.CW2/A, certified copy of account opening form of accused Narinder Kumar as CW2/B; certified copy of cheque book issuing register as Ex.CW2/C; certified copy of cheque returning register as Ex.CW2/D; and certified copy of statement of accounts of accused Narinder Kumar as Ex.CW2/E.

When examined under Section 313 Cr.P.C., the accused pleaded innocence and false implication. It was stated that he got financed a washing machine and CD player from M/s Singh Finance and cheque in question was given as security being blank and signed. He had repaid the entire loan but in spite of that, the cheque was not returned and ultimately, it was misused to file the present complaint. He has also placed on record the documents and receipt of repayment of that amount.

After hearing learned counsel for the parties and perusing of the evidence brought on record, learned trial Court dismissed the complaint and acquitted the accused of the charge framed against him.

Hence the present application for special leave to appeal.

There is no assistance on behalf of the parties, however, this Court has scanned the entire case file.

It is the case of the applicant-complainant that he had advanced a loan of Rs.80,000/-, to the accused at the rate of 1% per month on 05.10.2007 and furtherance thereof, the accused executed one pronote and receipt in his favour, Exs.C1 and C2, respectively. Thereafter, a compromise was effected between the parties, Ex.C3 and as per the same, the accused issued the cheque in question on the assurance that the same will be honoured. However, all these documents have not been relied upon by the complainant in his complaint as well as in the affidavit, furnished as part of the pre-summoning evidence. The complaint and the affidavit are dated 06.04.2009, whereas, the documents, Exs.C1 to C3, were tendered along with his affidavit Ex.CW1/A on 23.03.2012, i.e. after about two years. There is no reference of Ex.C1 to C3 in the complaint as well as affidavit dated 06.04.2009. He has also not stated in his complaint that the cheque of Rs.70,000/- was issued by the accused in discharge of part liability or otherwise. No amount of loan, date of advancement and the factum of interest charged has been mentioned in the complaint.

As against this, the version of the accused is that no such loan was ever raised by him from the complainant. The cheque in question being blank and signed, was handed over to the complainant as security, when he financed a washing machine and CD player from the firm of the complainant, M/s Singh Finance and despite repayment of the entire loan amount, the complainant misused the cheque in question. The accused produced on record receipts Exs.D1 to D7, in respect of repayment of the earlier loan. The complainant has duly admitted the fact of advancement of loan to the accused by his firm M/s Singh Finance for the purchase of washing machine and CD player and also admitted issuance of receipts by his firm along with the fact that the accused has repaid the loan to M/s Singh Finance Corporation. The alleged pronote and receipt, Exs.C1 and C2, are shown to be witnessed by one Jasbir Singh, but for the reasons best known to the complainant, this witness has not been examined to prove the execution of the above said documents. As far as the alleged compromise, Ex.C3 is concerned, the accused has taken a stand that the same is a forged document as his signatures were obtained by the complainant on a blank paper. Also, he must have signed on the right hand side of the paper. The allegation of forgery finds strength from the fact that usually, at the time of preparation of such documents, the name of the first party appears on the left hand side of the paper, whereas, the name of the second party appears on the right hand side. However, a perusal of Ex.C3 reveals that the name of the second party, i.e. complainant is mentioned first, i.e. on the left hand side of the paper and that of the accused is mentioned on the right hand side.

Furthermore, the complainant has admitted during his cross-examination that he has maintained record regarding advancement of loan to the accused but no such record was ever produced.

In ***State of Rajasthan vs Shera Ram @ Vishnu Dutta, (2012) 1 SCC 602***, Hon'ble the Supreme Court has held as under:-

"13. When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has proved its case and the evidence led by *the prosecution, in conjunction with the chain of events as are stated to have occurred, if, points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence."*

In view of the above discussion, this Court finds favour with the findings recorded by learned trial Court to the extent that the complainant's version is surrounded by doubts and suspicion and merely on the basis of the admission of signatures by the accused on the cheque in question, he cannot be held guilty for its dishonour without any proof of a legally enforceable liability. In the case of ***Indus Airways (P) Ltd. Vs. Magnum Aviation (P) Ltd., (2014) 12 SCC 539,*** Hon'ble the Supreme Court has observed as under:-

"The Explanation appended to Section 138 of the NI Act explains the meaning of expression "debt or other liability" for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The Explanation leaves no manner of doubt that to attract an offence under Section 138, there should be legally enforceable debt or other

> *liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of existing or past adjudicated liability is a sine qua non for bringing an offence under Section 138."*

In the present case, the complainant has failed to prove his case, since the cheque in question was said to be given as security and not in discharge of any legally enforceable debt or liability.

Accordingly, finding no merit in the instant application, the same is hereby dismissed and impugned judgment dated 20.08.2014, rendered by the trial Court is hereby affirmed.

Special leave to appeal declined.

15.11.2016 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No