IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A No.1302-MA of 2017 (O&M)
Date of decision: 30.10.2017

Meenakshi Singla

….Applicant/Appellant

Versus

Manish Kumar

….Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sandeep Singh Jattan, Advocate
for the applicant/appellant.

ARVIND SINGH SANGWAN J. (Oral)

CRM No.34489 of 2017

Heard.

Allowed as prayed for.

Certified copy of the impugned judgment dated 19.09.2016 is taken on record subject to just exceptions.

MAIN CASE

The present appeal has been filed challenging the judgment dated 19.09.2016 passed by the trial Court acquitting the respondent/accused in a complaint filed under Section 138 of the Negotiable Instruments Act (hereinafter to be referred as 'the N.I. Act') preferred by the appellant.

Brief facts of the case are that the appellant is the sole proprietor of M/s. Vidya Parkash Surinder Kumar (in short 'the firm') situated at Grain Market Saha, District Ambala and the respondent/accused is having old business relationship with the said firm. It is further alleged that in the month of May, 2014, the respondent/accused took a loan of Rs.8 lacs on a simple interest @ 7 % per annum and promised to return the same with interest in November, 2014 at the time of arrival of paddy crops. The accused has given a cheque bearing No.013117 dated 17.12.2014 for a sum of Rs.8.30 lacs drawn on Axis Bank in the name of the complainant/appellant. The said cheque was presented before the bank on 19.12.2014 and the same was returned by the bank with the remarks *'cheque-book destroyed'*. The cheque was again presented on 26.12.2014 and was returned with a memo dated 26.12.2014 with the remarks *'cheque is marked unusable'*. Later on, the complainant issued a legal notice on 12.01.2015 through registered post but the accused failed to make the payment and, therefore, the complaint was filed.

After the complainant led the preliminary evidence, the trial Court summoned the respondent/accused to face trial vide order dated 14.07.2015 and notice of accusation was served on 05.08.2015 to which he did not plead guilty and claim trial.

The complainant in pre-charge evidence recorded CW1 an official of Axis Bank, GPA of the appellant appeared as CW2 and tendered the affidavit as Ex.CW2/A. Apart from the oral evidence, the appellant submitted exhibit C1 – registration certificate of the firm, Ex.C2 – VAT-GI form, Ex.C3 – Power of attorney, Ex.C4 – cheque in disptue, Exs.C5 and C6 – bank return memos, Exs.C7 and C8 – legal notice, Exs.C9, C10 and C11 – postal receipts, envelope and acknowledgments, Exs.C12 and C13 – statement of accounts, Exs.C14 and C15 – Inward clearing zone validation report, Ex.C16 – statement of accounts and Exs.C17 and C18 – cheque referred/return register.

The statement of accused under Section 313 Cr.P.C. was recorded in which he pleaded his innocence and in defence evidence, he examined DW1 – Pankaj Kumar, an official of Axis Bank, DW2 – EASI Sukhdev Ram, DW3 – ESI Sukhdev Ram and DW4 – Pankaj Verma, another official from Axis Bank.

Thereafter, the trial Court vide its judgment dated 19.09.2016 acquitted the respondent/accused by passing the following order:-

> ***"8.*** *I have heard the arguments advanced by the learned counsel for the parties and have gone through the case file carefully.*
>
> ***9.*** *In the present case, the contention of the complainant is that the accused took a loan of 8,00,000/- from the complainant and to ₹ discharge his legal liability, the accused issued the cheque in dispute EXC4 which on presentation in the bank got dishonored with the remark "Other reasons (cheque book destroyed) and Cheque is marked unuseable". The returning memos are EX-C5 and EX-C6. Thereafter, a legal notice was also sent to the accused through registered post. The legal notice is EX.C7 and the postal receipts are EX-C9.*
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> ***10.*** *The accused admitted his signature on the cheque in dispute. The admission of signature on the cheque in dispute gives rise to the presumption that it had been issued for some consideration. It was held by Hon'ble Punjab and Haryana High Court in Harbhajan Singh vs.*

Sukhdev Singh, Cr no. 960/2011 (P&H), that "where Signature on the cheque is admitted, presumption is attached that it has been issued for come consideration". Similar view was taken by Hon'ble Supreme Court of India in Rangappa vs. Shri Mohan,2010(3) Crimes 40. The onus to rebut it shifted on the accused.

11. *The defence taken up by the accused is that the no loan was ever taken by the accused from the complainant and no cheque was ever issued in favour of complainant. The cheque book of the accused was lost and a DDR in this regard was registered in the P.S. Saha. He also argued that the complainant has misused the cheque of the complainant and filed this false complaint. He also argued that the complainant could not prove the source of his income.*

12. *To prove his defence, the accused placed reliance upon the evidence of complainant. In the affidavit EX-CW1/A, complainant stated that he gave Rs. 8 lakh in may 2014. In the cross examination he stated that he took money from some of the farmers and gave it to accused and some amount was withdrawn from his own account. But neither the account statement has been placed on record nor any of the farmers has been examined by the complainant, to prove that he received money from them. The source of money in a case under section 138 of the Negotiable Instrument Act is an important question and the same has to be proved on record beyond reasonable doubt.*

In ***John K. Abraham vs. Simon C. Abraham, 2014 (1) RCR (cr)267****, it was held by Hon'ble Supreme Court of India that where Complainant did not prove the source of income. Accused is liable to be acquitted. Similar view was taken by Hon'ble Punjab and Haryana High Court in Shiv Dial Singh v. Jitender Kumar (P&H) 2015(4) R.C.R.*

(Criminal) 939.

*In **Amit Kumar vs. Yogesh Arora, 2015(5) Law Herald 4490**, Hon'ble Punjab and Haryana High Court acquitted the accused on the grounds that__*

***1.** Complainant was income tax payee, but he did not show the amount in income tax return*

***2.** Complainant has failed to prove as to in which capacity, he had paid such a huge amount without any document*

***3.** Complainant has failed to prove his case and the presumption goes against him.*

*In **K. Subramani vs. K. Damodara Naidu, 2015(1) CCC 001**, the Hon'ble Supreme Court of India held that where complainant failed to prove the financial capacity to advance loan and that there is legally enfoceable debt payable by the accused, the accused is entitled to be acquitted.*

***13.** Similar is the fact of the present case. Moreover, during the cross examination of CW1, the witness stated that he has entered the name of the farmers in the Roznamcha. He was carrying the Roznamcha of 14.5.2014, copy of which was placed on record as EXCW2/AA. He also stated that there is no serial number mentioned in the Roznamcha and this document is written by him. He admitted that his signatures are not available in the Roznamcha. Perusal of document EX-CW2/AA shows that there are entries of various persons and before the name of persons, some amount is mentioned. As per the cross-examination of CW1, entry in the Roznamcha are of those people who have either given or taken money from the complainant. But on page 1 of EX-CW2/AA, on right top, the name of accused is mentioned and before his name, the amount of Rs. 8,30,000/- is mentioned. This document is dated 14.5.2014. But as per the version of complainant, the accused took a loan of Rs. 8 lakh in May*

2014 on 7% interest which was to be returned in November 2014 and he issued cheque in question of Rs. 8,30,000/- on 17.12.2014. But entry of Rs. 8,30,000/- was made on 14.5.2014, i.e, at the time when the alleged loan was granted. But how come complainant was aware about the interest amount on the date of alleged loan is not explained. If we calculated the interest from MayNovember @7% per annum, then it comes out to be Rs. 28,000/-. But the interest is calculated by the complainant as Rs. 30,000/- and there is entry of the same on 14.5.2014. Also, perusal of EX-CW2/AA shows that the entries are of different Ink, which creates doubt about writing the same on 14.5.2014. Moreover, this document is self generated document and signature of accused below his name is also not proved on record.

14. *Ld. Counsel of the complainant argued that the signature on the cheque in dispute is not denied by the accused, which raises the presumption that it was issued for some consideration. Of course, this Court is aware of the fact that Section 139 of the Negotiable Instruments Act, 1881 gives rise to a presumption that such cheque was received in discharge of a debt or liability. But such a presumption cannot be further extended to presume that there was such a debt or liability. Even assuming that such a debt or liability can be presumed, such a presumption is only a rebuttable presumption. The general presumption that a person shall be presumed to be innocent unless he is proved to be guilty is not in any way affected. The presumption contemplated in Section 139 of the Negotiable Instruments Act, 1881 causes a reverse burden on the accused and such a reverse burden can be discharged by rebutting such presumption. To rebut the presumption under Section 139 of the Negotiable Instruments Act, 1881, it is not necessary for an accused to* *adduce evidence capable of proving beyond reasonable doubt. It shall be sufficient to prove the contra by preponderance of probabilities and then such presumption shall stand rebutted.*

It was held by Hon'ble Supreme Court of India in ***Krishana Janardhan Bhat vs. Dattatraya G. Hegde, 2008 (1) CCC 983 (SC)****, that "Presumption under section 139 is that the cheque was issued in discharge of some liability. Existence of legally recoverable debt is not a matter of presumption u/s 139".*

15. *In the present case also, the accused is able to rebut the presumption against him from the evidence available on record. It was the duty of complainant to prove the source of his income. It was also his duty to show that he had such a huge amount at any point of time. But it was not done by him. No witness has been examined to prove the transaction between the parties. No document has been produced by the complainant to prove that he gave such a huge amount to the accused.*

16. *In view of the above, discussion, the complaint is dismissed and the accused is acquitted from the allegations levelled against him. His bail bond and surety bond also stand discharged. File be consigned to the record room after due compliance.***"**

It is submitted on behalf of the appellant that the trial Court has erroneously acquitted the respondent/accused despite the fact that the accused has admitted signatures on the cheque and, therefore, there is a presumption under Section 139 of the N.I. Act that it has been issued for some consideration. It is also submitted that the appellant has proved from her affidavit that the respondent/accused has taken Rs.8 lacs in the year 2014 and has issued a cheque of Rs.8.30 lacs in lieu thereof. It is also submitted that in the roznamcha/ledger which is produced as Ex.CW2/AA, maintained by the firm of the complainant, the entries regarding advancement of loan is made and, therefore, the loan was proved and it was also proved that the cheque was issued in discharge of legal liability.

After hearing counsel for the appellant and on the basis of photocopy of lower Court record relied upon by him, I find no merit in the present appeal. On the ledger/roznamcha dated 14.05.2014 Ex.CW2/A, neither there is a serial number nor the signature of the complainant are obtained in the roznamcha/ledger as an acknowledgement of receiving Rs.8 lacs. There are various entries in this roznamcha relating to different persons. It has come in the statement of CW1 that the entry in this roznamcha qua the accused is on page No.1 and an amount of Rs.8.30 lacs is mentioned whereas as per the complaint, it is mentioned that the accused has taken a loan of Rs.8.0 lacs in the month of May, 2014 @ 7% per annum with a promise to return the same in November, 2014 and he issued a chque of Rs.8.30 lacs on 17.12.2014, therefore, mentioning of the amount of Rs.8.30 lacs in this ledger dated 14.05.2014 makes the case of the complainant doubtful. It is nowhere explained by CW1 that when the loan of Rs.8 lacs was granted on 14.05.2014, how this entry of Rs.8.30 lacs was made on the same day.

The another suspicious fact apparent on record is that even if it is taken that an amount of Rs.8.30 lacs is entered by calculating including the interest @ 7% per annum, since no actual date for return of the alleged loan was fixed, therefore, this entry of Rs.8.30 lacs including interest on 14.05.2014 itself if not explained. There is no signature of the accused on this entry acknowledging that he has obtained the loan and, therefore, the trial Court has rightly held that the advancement of loan is not proved.

The arguments raised by counsel for the appellant is that since the signatures of the accused are admitted on the cheque, there is a presumption under Section 139 of the Act is not acceptable, in the light of the facts of the present case as same is a rebuttable presumption.

Looking from another angle, the entire case of the complainant is based upon a bahi entry. The complainant is a commission agent and the respondent/accused is a farmer and in view of the judgment passed by this Court ***"Narsi Dass vs Surender",* 2015(1) RCR (Criminal) 104**, where this Court has held that if the complainant set up a case advancing loan and making bahi/ledger entries, the same cannot be treated as a negotiable instrument under Section 118 of the N.I. Act read with Section 34 of the Indian Evidence Act and as such, the entries alone is not sufficient to charge a person with liability. The entries which are made in bahi/ledger are not per se admissible as the complainant has examined only her GPA in the Court and has not appeared herself as her own witness.

It may also be noticed that the respondent/accused has led evidence that in fact no loan was taken by him and no cheque was issued in favour of the complainant. The cheque-book of the accused was lost and he has registered a DDR at Police Station Saha and in this respect, he has examined EASI Sukhdev Ram as DW2 and ESI Sukhdev Ram as DW3. The accused has also led the evidence that he has given the intimation to the bank and to return the same. Therefore, on 26.12.2014 the cheque was returned with the remarks that cheque is marked as unusable and, therefore, the accused before presentation of the cheque has already given intimation to the bank as well as to the police regarding loss of cheque-book.

The complainant has failed to prove the source of income of payment of huge amount of Rs.8 lacs. The Hon'ble Supreme Court in ***"K. Subramani vs K. Damodara Naidu",*** **2015(1) CCC 001** has held that where the complainant has failed to prove the financial capacity to advance a loan, the accused is entitled for acquittal.

For the reasons recorded hereinabove, the appeal fails and is accordingly dismissed.

30.10.2017 **(ARVIND SINGH SANGWAN)**
yakub **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No