

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CRM-A-1528-MA-2015

Date of Decision: 02.02.2017

Raj Kumar

.....Appellant

Vs.

M/s Ashoka Tyres and another

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sailender Singh, Advocate,
for the complainant.

AMOL RATTAN SINGH, J.

By this application, the applicant seeks leave to file the accompanying appeal, challenging the judgment of the learned Additional Chief Judicial Magistrate, Rewari, dated 04.12.2013, acquitting the respondents in the accompanying appeal (accused in the complaint filed by the applicant) of the charge of having committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The facts, as taken from the judgment of the learned ACJM, are that the applicant-complainant (hereinafter to be referred to as the complainant) had stated in his complaint, that on 29.11.2010 the two respondents in the complaint (hereinafter to be referred to as the respondents) had taken a loan of Rs.7.5 lacs from him to purchase wheel alignment machines. In order to discharge that debt, cheque No.169279 dated 29.04.2011 was stated to have been issued for the aforesaid amount of Rs.7.5 lacs, which was presented by the complainant to his bank, i.e. Punjab

National Bank Rewari, on 02.05.2011. The cheque is stated to have been returned on 03.05.2011 with the endorsement that the “Drawers' Signature Differs”. It was again presented by the complainant, upon which it was again returned with the same endorsement, in addition to the remarks that the “Payment has been Stopped by the Drawer and Funds were Insufficient”.

3. A legal notice was stated to have been issued to the respondent on 24.05.2011, who replied to it through his counsel, denying any liability to discharge any debt.

Consequently, the complaint was instituted on 14.06.2011. The complainant examined one Vinod Kumar who tendered his affidavit by way of evidence and proved a copy of the legal notice, Ex.PA, as also postal receipts, Exs.PB to PE. He further examined Ajay Sharma, Deputy Manager of the Axis Bank, Rewari, who proved the memos as Exs.PF and PG, by which the cheque was returned, as also the statement of account of the respondent-accused, i.e. M/s Ashoka Tyres, Rewari. Manoj Kumar, an officer from the PNB was also examined as PW3, who proved the statement of account of the complainant as also the deposit slips and counter deposit slip. Lastly, the complainant examined himself as PW4 and Shamsheer Singh Malik, a handwriting and fingerprint expert, as PW5. This witness tendered his affidavit Ex.PW5/A and report Ex.PW5/B, as also photographs, Exs.PW5/C1 to PW5/C7.

4. The respondent-accused examined a complaint clerk from the office of the Superintendent of Police, Rewari, Pritam Singh, as PW1, who proved a copy of an application made to the S.P.Rewari and an application to the Deputy Commissioner. The Assistant Manager of the PNB, Rewari, was examined as DW2, who also proved the statement of account of the

complainant. DW3 Abhinav Bhardwaj was examined to prove the statement of account of the first respondent, i.e. the firm M/s Ashoka Tyres, for the period from 01.03.2010 to 31.03.2011.

The respondent-accused also examined a handwriting and fingerprint expert as DW4, collection agent Naresh Kumar as DW5, who proved the copy of authority letter Ex.DW5/A and a retail invoice as Ex.PW5/B. DW6 Pawan Kumar was examined to prove a copy of another complaint, as Ex.PW6/A.

5. Having appraised the evidence before it, the learned trial Court found that the applicant herein, i.e. the complainant, had been cross-examined at length about his profession and source of his income, including the fact as to whether he pays income tax and filed his returns, but he did not produce any document to show such income. This was so even though his cross-examination was deferred for that purpose, on the ground that he would bring the income tax return but still did not do so.

6. The learned Court found that though the complainant had stated that apart from his income as an Advocate, he also had rental and agricultural income, no evidence was led in that regard. Further, the amount of Rs.7.5 lacs alleged to have been lent to the accused, was also without any documentation or security.

The contention of the complainant was that he had taken Rs.3,00,000/- from one Shamsher Singh Yadav and Rs.1,00,000/- from Ajay Aggarwal, also an Advocate, 2 to 3 days before lending the said amount to the accused, at an interest of 18% per annum. However, none of the aforesaid Advocates was examined by him.

Further, the learned trial Court observed that it was contended

that though the loan was advanced @ 18% per annum, the cheque amount claimed was only for Rs.7.5 lacs, i.e. the principal. Hence, the contention with regard to interest payable, was found to be an important improvement during cross-examination.

7. Yet further, it was found that in his cross-examination, the complainant had also admitted that the accused was not known to him prior to being introduced through a relative. Thus, there was no long standing association between the complainant and the accused, so as to presume that he would lend such a large amount of money without any writing or security, and that also after borrowing it from his own friends.

8. The proprietor of the respondent-company, i.e. respondent no.2, in his statement under Section 313 Cr.P.C., took a specific plea that in the ordinary course of his business, he used to leave signed and unsigned cheques at his shop, where one Rakesh and another, Rajender, used to sit, who had removed the cheques in his absence. After he came to know of the theft, he informed the bank and also complaint against the aforesaid two persons.

Though the complaint, Ex.DW6/A, was not found to have been proved by any witness examined, however, DW1 Pritam Singh, the Assistant from the office of the Superintendent of Police, proved that a complaint had been given to the DSP and Superintendent of Police with regard to cheques having been stolen.

More importantly, the cheque had been returned by the bank, the first time, with the remarks that the drawers' signatures differed. Thereafter, as deposed by DW3, the witness from the bank, that the applicant had given instructions to stop payment immediately.

Yet further, DW3 also deposed that the respondent was not, in fact, using the cheque book containing the series of cheques of which the disputed cheque was a part.

On the aforesaid evidence, including the report of the handwriting and fingerprint expert examined by the respondent, DW4, to the effect that the writing on the cheque and the signatures were not of the accused, it was held that there was a misuse of the cheque.

The expert examined by the complainant, i.e. PW5, gave his report with regard to the signatures and not of the writing on the cheque. The signatures in any case having been found to be different by the bank itself, the said experts' opinion was not found to be reliable by the trial Court.

9. Thereafter referring to various case law cited on both sides, the learned trial Court, essentially holding that there was no evidence to prove the factum of Rs.7.5 lacs having been loaned, the respondent-accused deserved to be acquitted.

Consequently, the complaint was dismissed and the accused so acquitted.

10. Before this Court, Mr. Sailender Singh, learned counsel appearing for the complainant, argued in terms of the complaint and submitted that the onus was upon the respondent-accused to prove that the cheque was not issued in discharge of any debt or liability. Hence, as per learned counsel, the trial Court had wholly erred in presuming that there was no loan advanced by the applicant herein to the respondent.

11. Having considered the aforesaid argument as also the judgment of the learned trial Court, I find no error in the judgment as would warrant interference by this Court.

12. That Court has given detailed reasoning as to how, firstly, the cheque itself was not proved to have been given by respondent no.2, i.e. the proprietor of the firm (respondent no.1), to the complainant, it having been stolen and misused. The Court further found that there was no source of income whatsoever shown by the complainant, from which he could have advanced a loan of Rs.7.5 lacs to the respondents. Yet further, the question of any friendly loan given after borrowing the amount from another person, was also found not to be proved, with the two Advocates from whom the complainant had allegedly taken a loan to further advance a loan to the respondents, also never having been examined.

Hence, in the aforesaid circumstances, the trial Court came to the correct conclusion in acquitting the accused.

No debt or liability payable by the respondents having been proved by the complainant, by way of any documentary or oral evidence, i.e. it could not be proved by him that he had actually advanced a loan of Rs.7.5 lacs to the respondents, the onus to rebut the presumption raised under Section 139 of the Act, stood fully discharged by the respondents.

Further, with the signatures on the cheque itself not having been admitted by the second respondent, and with even the factum of the cheque itself not having been proved to have been given to the appellant-complainant, the presumption under Section 139 would cease to operate in his favour in the circumstances.

Yet further, with the respondent-accused having proved before the trial Court that the cheques in question were never issued by him, with his signatures thereon found to be differing, the presumption stood fully rebutted.

13. Consequently, finding no merit in this application, it is dismissed and leave to appeal is declined.

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14. By this application a delay of 578 days in filing the application seeking leave to appeal, is sought to be condoned. Though much part of the delay is stated to be on account of the fact that an appeal was first erroneously filed before the Sessions Court and was thereafter withdrawn thereby causing a delay of 488 days, there is still a gap of 90 days thereafter, before which the application was filed.

However, the application seeking leave to appeal itself having been dismissed on merits by this Court, the question of condoning the delay in filing it is rendered academic and is not gone into.

(AMOL RATTAN SINGH)
JUDGE

February 02, 2017
dinesh/vcgarg

Whether speaking/reasoned	Yes
Whether Reportable	Yes