

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CRM-A-204-MA-2015
Date of Decision: 02.02.2017

Sunder

.....Appellant/Complainant

Vs.

Basiruddin

.....Respondent/accused

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Bharat Bhushan Sharma, Advocate,
for the complainant.

AMOL RATTAN SINGH, J.

By this application, the applicant seeks grant of leave to appeal against the judgment of the learned Judicial Magistrate Ist Class, Faridabad, acquitting him of the accusation of being guilty of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The facts, as taken from the impugned judgment, are that the complainant herein filed a complaint against the respondent, stating that he was a close friend of his who wanted to set up a business at Faridabad and needed funds for that purpose. The complainant is stated to have loaned him Rs.4,00,000/- after taking the amount from relatives. However, upon the amount not being returned, the said relatives and the present applicant (complainant) reached the house of the respondent requesting him to repay the amount, on which he is stated to have issued cheque No.332615 on 18.02.2009, for an amount of Rs.4,00,000/-, drawn on the State Bank of Saurashtra. The cheque is stated to have been drawn in favour of the

complainant but when it was presented to the complainants' bank for clearance, i.e. the Central Bank, Sector-15, Faridabad, it was returned back dishonoured, stating the reason to be "Insufficient Funds".

The complainant thereafter issued a legal notice through registered A.D. post on 30.05.2009, but upon the respondent having failed to make the payment of the cheque amount within the statutory period of 15 days, the complaint came to be filed.

3. By way of evidence, the complainant tendered the cheque in question as Ex.C1, the return memo from the bank as Ex.C2, the legal notice as Ex.C3 and the postal receipt pertaining to receipt of the notice as Ex.C4.

The respondent having been summoned, he was served with the notice of accusation under Section 138 of the Negotiable Instruments Act, to which he pleaded not guilty and claimed trial.

His plea, recorded under Section 263(g) of the Code of Criminal Procedure, was to the effect that he had never taken any loan from the complainant, nor had he issued the cheque in question. He also denied receipt of the legal notice and pleaded false implication.

4. The respondent herein cross-examined the applicant-complainant having filed an application under Section 145 (2) of the Act, and further examined one Satyadev Aggarwal as DW1, who was a handwriting expert.

He also led the experts' report in evidence as Ex.DW1/B and enlarged photographs of the disputed signatures as Exs. DW1/C to DW1/F.

5. The learned trial Court having considered the pleadings and the arguments raised before it, also having appraised the evidence, found that the complaint gave no date of when the loan was given by the respondent to the complainant, nor was there any document led by way of evidence, to prove the

loan transaction.

Further, though the present applicant (complainant) had alleged that it was a friendly loan given by him, any friendly relations between the two parties had been denied by the respondent-accused who had, in cross-examination, elicited from the complainant herein that he was acquainted with the accused since 2004. (The complaint was filed on 01.07.2009). However, it was found by the Court that neither did the complainant know the names of the parents of the accused, nor his siblings. Hence, the trial Court found it difficult to accept that there was any friendly relation with the parties, by which a loan of Rs.4,00,000/- would be advanced by the complainant to the accused, with no documentation in respect of the loan.

It was further found that in his cross-examination, the applicant-complainant had stated that the loan was given in the year 2008 in the presence of one Bachhu. However, neither was Bachhu examined, nor was he even named in the complaint or in the affidavit filed by the complainant. Hence, the statement made in cross-examination was held to be an improvement made by the complainant.

6. As regards the financial capacity of the complainant to have advanced the loan to the respondent-accused, it was further found that in cross-examination the complainant had stated that he had borrowed the loan amount from his maternal uncle at an interest of 2%. Thus, it was further found difficult by the Court to believe that a person would advance an interest free loan, after himself borrowing money on interest @ 2%. Still further, even the maternal uncle mentioned, was never examined.

In the aforesaid set of circumstances, the advancement of the loan itself by the complainant to the respondent-accused, was disbelieved by the

trial Court.

7. The respondent having also denied his signatures on the cheque, he in fact, having denied issuing it in the first place, though the report of the fingerprint expert examined by the respondent was not given serious consideration by the Court, on the ground that DW1 could be a procured witness, however, with the factum of the loan having been advanced itself disbelieved, it was held that whether the cheque was signed or not by the accused was inconsequential, as no legally recoverable debt or liability had been proved.

On the aforesaid reasoning, the complaint was dismissed and the respondent-accused, acquitted.

8. Before this Court, Mr. Bharat Bhushan Sharma, learned counsel for the complainant, reiterated the contentions made in the complaint, emphasising on the fact that firstly, the loan in question was a wholly friendly loan and therefore, there would be no question of any proof thereof, but with the cheque in question having been not denied to be pertaining to the account of the respondent-accused, even the denial of his signatures thereupon lost all meaning and the onus actually was on him to prove that he had not issued the cheque and that it was not issued in the discharge of a debt or liability. Hence, learned counsel submitted that the learned trial Court wholly erred in dismissing the complaint of the applicant and acquitting the respondent-accused.

9. Having considered the aforesaid arguments as also the judgment of the trial Court, I find no reason to interfere with the judgment, in view of the fact that the first ingredient necessary to seek relief under Section 138 of the Negotiable Instruments Act, is that any cheque drawn by a person on an

account maintained by him with a banker, for the payment of any amount of money from that account, is for the discharge of any debt or other liability.

Section 139 of the Act no doubt postulates that the holder of a cheque, of the nature referred to in Section 138, is presumed to be holding holds such cheque in the discharge of any debt or liability that the person issuing the cheque so discharge, in favour of the holder.

To that extent, learned counsel is correct, as undoubtedly the applicant was in possession of a cheque pertaining to the bank account of the respondent accused. However, the accused, as is often the case, firstly did not admit to his signatures on the instrument. Thus, with the signatures of the respondent wholly denied by him, and he further having also led evidence in the form of the report of a handwriting expert whom he also examined, with no such exercise having been done by the applicant, some part of the onus cast on the accused stood discharged. Further, with the respondent-accused having on facts shown that no debt or liability existed in the discharge of which he could be shown to have executed the instrument, and the appellant-complainant not having been able to lead even an iota of evidence, other than his own testimony, to prove that he had given such loan to the respondent herein, the presumption raised under Section 139 stood fully rebutted, in the opinion of this Court.

In this regard, a judgment of the Supreme Court in **Vijay v. Laxman** (2013) 3 SCC 86 can be quoted as follows:-

“We are not unmindful of the fact that there is a presumption that the issue of a cheque is for consideration. Sections 118 and 139 of the Negotiable Instruments Act make that abundantly clear. That presumption is, however, rebuttable in nature. What is most important is that the standard of proof required for rebutting any

such presumption is not as high as that required of the prosecution. So long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged. Whether or not it is so in a given case depends upon that facts and circumstances of that case. It is trite that the courts can take into consideration that circumstances appearing in the evidence to determine whether the presumption should be held to be sufficiently rebutted. The legal position regarding the standard of proof required for rebutting a presumption is fairly well settled by a long line of decisions of this Court.”

10. Hence, in the opinion of this Court, with no documentary, or even oral evidence in the form of any witness whatsoever, having been led by the applicant in respect of the loan alleged to have been advanced by him to the respondent, I find no error in the judgment of the learned trial Court, in holding that the first ingredient necessary for invoking Section 138, was missing from the complaint.

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

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11. In view of the fact that the application seeking leave to appeal itself has been dismissed on merits, this application seeking condonation of the delay of 115 days in filing the application is rendered academic and is not gone into.

(AMOL RATTAN SINGH)
JUDGE

February 02, 2017

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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No.