IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-927-MA-2014
Date of decision :27.10.2017

Birpal Singh

...... Applicant

Versus

Dr. Pale Ram

...... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

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Present : Mr. P.S. Jammu, Advocate
for the applicant.

Mr. Deepak Kaushal, Advocate
for the respondent.

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H.S. MADAAN, J.

Complainant – Birpal Singh had filed a complaint under Section 138 of the Negotiable Instruments Act against accused Dr. Pale Ram, on the allegations that accused had borrowed a sum of ₹1,20,000/- from the complainant and the accused in discharge of aforesaid liability had issued a cheque No.355989 dated 20.05.2011 in the sum of ₹1,20,000/- in favour of the complainant drawn on State Bank of India, Odhan, Tehsil Dabwali, District, Sirsa. However, on presentation, the cheque was returned uncashed with memo of the bank dated 02.06.2011 having endorsement "payment stopped by the drawer". The complainant had issued a statutory notice to the accused through his counsel, calling upon him to make payment of cheque amount within 15 days of receipt of notice, but to no effect, as such, he had filed the complaint.

After recording the preliminary evidence, accused was summoned. Accused put in appearance, notice of accusation for offence under Section 138 of the NI Act was served upon him, to which he pleaded not guilty and claimed.

During the course of his evidence, the complainant got his own statement recorded as PW-1 and corroborated the averments as given in the complaint. He further examined Rajender Kumar, Record Keeper as PW-2 and Sandeep Kumar as PW-3, who supported his version. The complainant proved cheuqe in question as Ex.P1, copy of legal notice dated 16.06.2011 as Ex.P2, postal receipt as Ex.P3.

Statement of accused under Section 313 Cr.P.C. was recorded, in which all the incriminating circumstances appearing against the accused were put to him, but he denied the assertions and pleaded his innocence and false implication in the present case. The accused during his defence evidence tendered his affidavit Ex.D1 and thereafter closed the said evidence.

After hearing arguments, the trial Court acquitted the accused vide judgment dated 25.04.2014 for the following reasons:-

i. Complainant – Birpal Singh appearing as PW-1 had admitted in his cross-examination that in March, 2008, the amount was given to the accused, but complaint was filed on 19.07.2011, in that way it relates to time barred debt, therefore, the accused deserved to be acquitted. In support of that contention, the trial Court has referred to authority **Joseph vs.**

Devassia, 2000(4) RCR (Crl.) 686 (Kerala). The trial Magistrate had further referred to authority **Devarsha Dnyaneshwar Parob vs. Mulgao Sirigao Advalpal, 2011(2) CCC, 268 (Bombay)**, wherein it was observed that when the complainant had failed to prove any document or guarantee and report specifying the date on which the loan was sanctioned inasmuch as neither in the complaint nor in the notice or in the affidavit it was disclosed that the liability was towards the loan taken by the husband of the accused; that the accused had not given any undertaking to the complainant that she would repay the loan, defence of the accused was probable, conviction and sentence was set aside.

ii. It being proved on record that whole of the dealing regarding rental amount of the school was completed and there was due against any of the party.

Feeling aggrieved, the complainant has approached this Court by moving an application for leave to appeal, notice of which given to the respondent.

I have heard learned counsel for the parties, besides, going through the record.

Learned counsel for the applicant has referred to **H. Narasimha Rao vs. Venkataram R. 2007(5) RCR (Criminal) 485** wherein it was observed that there is no legal bar for the debtor agreeing to pay the time barred debt.

He further referred to **A.V. Murthy vs. B.S. Nagabasavanna 2002(1) RCR (Criminal) 745**, wherein it was observed that when a cheque had been issued in discharge of loan taken by accused four years earlier, accused had shown the amount in his balance sheet every year, it may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made.

However, I find that these authorities are not applicable, since in case of **H.Narasimha Rao vs. Venkataram R.** (supra) the loan transaction stood proved and debtor had consented to pay the time barred debt whereas it is not established in the present case. As regards other authority **A.V.Murthy vs. B.S. Nagabasavanna** (supra) the accused had not shown his amount in the balance-sheet and had not acknowledged the debt in any manner.

Learned counsel for the respondent had referred to authority **Sukhdev Singh vs. Baldev Singh 2016(2) RCR (Criminal) 314** by a Co-ordinate Bench of this Court, when an accused in a cheque bouncing case was acquitted the same was held to be proper observing as follows:-

> *"It was averred by complainant that accused took loan from time to time and thereafter issued cheque of Rs.3 lakh's to repay the same and cheque was dishonoured:-*
>
> *1. No particulars were given as to when and how much amount has been given. No dates, months and years have been mentioned in the complaint.*
>
> *2. There is nothing that in whose presence and at which place the amount was given.*
>
> *3. The complainant also failed to prove source of such a huge amount.*
>
> *4. Lower Court rightly held that in the facts and circumstances of the case presumption under Section 139 of the Negotiable Instruments Act stood rebutted by the accused.*

He had further referred to authority **K. Kumaravel vs. R.P. Rathinam 2011(3) RCR (Criminal) 574** wherein it was observed as under:-

> *"If a cheque has been given not for a legally enforceable debt or liability, the Court cannot come to the conclusion the drawer of the cheuqe has committed an offence. There can be acknowledgement for a time barred debt, but drawing of a cheque itself is not an acknowledgement unless the debut was enforceable on the date of issuance of a cheque."*

The authorities referred to by learned counsel for the applicant are not applicable due to different facts and circumstances and the context in which such observations had been made.. I find that the judgment passed by the trial Court is well reasoned one, based upon proper appraisal and correct interpretation of law and no ground is there to allow the application and to grant leave to appeal to the complainant to file the appeal.

Dismissed.

(H.S. MADAAN)
JUDGE

27.10.2017
Gaurav Sorot

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**