IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1491-MA-2016 (O&M)
Date of decision:12.01.2018

Ashok Kharbanda ... Appellant

Versus

Smt. Manju .... Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Rakesh Dhiman, Advocate for the appellant.

....

TEJINDER SINGH DHINDSA, J.

CRM-25871-2016:

In view of the averments made in the application, the delay of 9 days in filing the accompanying appeal is condoned.

Application is disposed of.

CRM-A-1491-MA-2016:

This order shall dispose of the instant application preferred under Section 378 (4) Cr.P.C. seeking leave to appeal against the order dated 30.05.2016 passed by JMIC, Gurgaon in the light of which the respondent has been acquitted and exonerated in a complaint under Section 138 of the Negotiable Instruments Act (hereinafter to be referred as 'the Act').

Brief facts are that a complaint was presented by the applicant alleging that the respondent in discharge of her liability had issued a cheque bearing No.717315 dated 03.08.2015 for Rs.3,60,000/- in favour of the complainant. Upon presentation of the cheque for encashment, the same was returned unpaid with remarks 'funds insufficient' vide memo dated

25.09.2015. The complainant sent a legal notice dated 03.10.2015 which was duly served upon the respondent yet, she failed to make good the payment of the cheque within the stipulated time period of 15 days.

After the stage of preliminary evidence, respondent was summoned to face trial for offence punishable under Section 138 of the Act. Having put in appearance, respondent was admitted to bail and was thereafter served with a notice of accusation under Section 138 of the Act, to which she pleaded not guilty and claimed trial.

In the ensuing trial and upon due appreciation of evidence, the trial Court has acquitted the respondent by taking a view that the cheque in question has not been proved to have been issued towards the discharge of any legally enforceable debt.

Counsel for the applicant/appellant has argued that in the instant case, the respondent had not adduced even a single witness to rebut the case and it is settled law that unless contrary is proved, it shall be presumed that the cheque was towards discharge of a debt or other liability. It is urged that the burden was on the accused to rebut the presumption under the provisions of the Act and simple denial by an accused is not sufficient to shift the burden on the complainant. It has been submitted that the trial Court has erroneously proceeded on the basis that burden of proving consideration for a dis-honoured cheque is on the complainant.

Counsel for the applicant/appellant has been heard at length. Pleadings on record as also the original records of the case that were requisitioned have been perused.

In the present case, the trial Court has applied the dictum laid down in **C. Bhaskaran Nair Vs. B. Mohanan 2009 (3) CCC 459,** wherein it had been laid down that a Court under proceedings relating to Section 138 of the Act is expected to examine whether the transaction covered by the cheque is genuine and bonafide. Further where there are suspicious circumstances surrounding the transaction, unless a satisfactory explanation is coming forth at the hands of the holder of the negotiable instrument as regards the suspicious circumstances, no conviction is legally permissible, based solely upon the statutory presumption.

Pleadings on record as also the original records of the case would bear out that the complainant in his cross examination had admitted that the respondent/accused is a mere acquaintance and that he has no family relations with her nor has any previous dealings. Inspite of that, admittedly the transaction of advancing Rs.3,60,000/- to the respondent had not been reduced into writing. As per deposition of the complainant, he did not even remember the date when such amount had been advanced. Complainant in his cross examination even admitted that no interest was chargeable on the massive amount of Rs.3,60,000/-. Even though, complainant had examined his real brother Sh. Ramesh Kharbanda as CW2 and who in turn testified that he had withdrawn an amount of Rs.5,60,000/- from his account and had given the same to the complainant but such fact has not been mentioned by the complainant either in the complaint or in the statutory legal notice served by him upon the respondent. This Court finds that the trial Court has noticed the suspicious circumstances culled herein above while recording an order of acquittal. No infirmity or perversity is found in the view taken by the trial Court.

It is settled that interference in an appeal would be called for only if the judgment under appeal is found to be perverse or based on misreading of the evidence. Interference would not be justified merely because this Court was to be inclined to take a different view. Learned counsel for the applicant/appellant has failed to point out any perversity/ misreading of the evidence adduced on record by the Trial Court in the impugned judgment.

For the reasons recorded above, no case for interference is made out. The application seeking grant of special leave to appeal against the impugned judgment dated 30.05.2016 is dismissed and consequently even the accompanying appeal is dismissed.

12.01.2018 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable Yes/No