

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-30561-2018 in/and
CRM-A-1785-MA-2018 (O&M)
Date of Order:27.05.2019

Binder Khadri @ Ravinder

..Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Diwan S. Adlakha, Advocate
for the petitioner.

ANIL KSHETARPAL, J(Oral)

CRM-30561-2018

Prayer in this application is for condonation of delay of 23 days
in filing the appeal.

For reasons mentioned in the application, which is supported by
an affidavit, the delay of 23 days in filing the appeal is condoned.

Application is allowed.

CRM-A-1785-MA-2018

This appeal has been filed against the judgment passed by the
learned trial court, dismissing the complaint and acquitting/exonerating the
accused.

The complaint was under Section 138 of the Negotiable
Instrument Act for dishonour of the cheque amounting to Rs.1,40,800/-.
The respondents-accused is a tea vendor. Learned trial court has recorded
cogent reasons to come to the following findings:-

“8. *The suspicion takes the form of credible doubt when the complainant fails to explain as to why he borrowed a sum of Rs.1,00,000/- from his Commissioner Agent for advancing it to the accused and that too without charging any interest. It is nowhere the case of the complainant that he was related to the accused by blood, adoption or any other distant relation. They belong to different castes and are residents of different villages. Moreover, there is nothing on record to suggest that the accused was in need of the aforesaid sum of Rs.1,40,800/- at the relevant point of time. The specific sum of Rs.1,40,800/- mentioned in the cheque (Ex.C1) is itself quite suspicious, for, under normal circumstances, a person would not obtain loan of such specific sum of Rs.1,40,800/- unless of-course there is a running account of transactions between the parties and at a given point of time such a sum of money is shown to be due against the accused. All these facts on record taken cumulatively renders the version of the complainant highly doubtful.*

9. *This doubt becomes graver in view of the fact that no written document of alleged loan transaction is shown to have been executed between the parties. In view of attendant/peculiar facts and circumstances of the case it is highly improbable of the conduct of complainant that*

he would advance such a huge sum of money merely on the basis of oral undertaking of the accused.

10. *Furthermore, from the contents of the statement (Ex.D2) and deposition of the concerned bank official (DW1) it is proved that the cheque in question relates to old bank account of the accused, which was closed by him on 10.6.2010. It is also proved that the payment of the cheque in question (Ex.C1) along with other cheques of the related cheque book was got stopped by the accused on 2.7.2009. The cheque in question (Ex.C1) is shown to have been issued on 31.12.2013. It is preposterous to believe that the accused had hatched a conspiracy in the year 2009 to cheat the complainant in the year 2013. This completely blows away the basis of the complainant's case and once the foundation has crumbled, its super-structure must also fall with it."*

Learned counsel for the appellant has submitted that there is a statutory presumption with respect to cheque having been issued for a legally recoverable dues and therefore, the learned court wrongly ordered acquittal of the accused.

This court has considered the submissions.

The presumption in favour of the holder of negotiable instrument is rebuttable. In the present case, apart from other things, it is apparent that the complainant himself has stated that he borrowed a sum of Rs.1,00,000/- from his commission agent for advancing it to the accused and that also without payment of any interest. It is not in dispute that the

complainant and the accused are not related by blood, adoption or any other distant relation. It is well settled that once the initial presumption available to the holder of negotiable instrument stands rebutted, the complainant is required to prove its case beyond reasonable doubt. In the present case, complainant-appellant has failed to discharge the aforesaid onus.

Hence, no ground is made out to grant leave to appeal.

Dismissed.

May 27, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No