IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-2083-MA-2018 (O&M)
Date of Order:02.07.2019

M/s Mansa Ram and sons

..Appellant

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jagjit Gill, Advocate
for the appellant.

Mr. KuldeepTiwari, Addl.A.G.,Haryana

ANIL KSHETARPAL, J(Oral)

Leave to appeal has been sought against the judgment of acquittal in a criminal complaint under Section 138 of the Negotiable Instrument Act, 1881.

Complainant-appellant is a commission agent, whereas accused is a farmer. It is the case of the complainant that there was dealing between the parties and the accused had borrowed a sum of Rs.13,00,000/- in installments. There are 6 different transactions with a gap of 10 to 1 month approximately. It has been found by the learned trial court that the ledger does not bear the signatures of the accused. The court has found it to be unusual. Still further liability of Rs.8,00,000/- has been admitted for which the mortgage deed has already been executed in favour of the complainant. It is the defence of the accused that 2 blank cheques have been misused. The court after appreciating the evidence led have found that the complainant has failed to prove its case beyond reasonable doubt and the presumption in favour of the holder of the cheque stands rebutted.

Learned counsel appearing for the appellant submitted that no doubt the ledger/accounts statement Ex.P3 does not bear the signatures of the accused, however, once the accused admits the liability of Rs.8,00,000/- by executing a mortgage deed and he also admits his signatures on the cheques, therefore, the court erred in passing the judgment. He further submitted that the court has failed to discuss remaining documents as the entire judgment is based upon discussion of Ex.P3.

This court has considered the submissions, however, find no substance therein.

It may be noted that counsel for the appellant was called upon to produce or at least show during the course of arguments that what were the documents and their relevance which have not been discussed, the counsel failed to show the aforesaid documents. It may be noted that in paragraph 3 the court has noticed various documents produced by the complainant. Thereafter the Court has discussed Ex.P3 in detail. It is expected that once the counsel at the time of arguments raises a contention, he is to substantiate the same on the basis of documents in support thereof. The other documents produced except Ex.P3 are not shown to be requiring detail discussion. Hence, no error in this respect is found to have been committed by the learned trial court.

As regards other argument of learned counsel, it may be noted that the accused has produced on file mark-'D1' a mortgage deed for alleged sum of Rs.8,00,000/-. It is not the case of the complainant that the aforesaid cheque in question had been given to redeem the mortgage. It is the case of the accused that 2 blank cheques were handed over to the complainant-firm as security. In these circumstances, it was incumbent upon prosecution to prove that the cheque in question was issued for due and payable liability.

No doubt, Section 139 of the Negotiable Instrument Act raises a presumption in favour of the complainant/holder of cheque, however, the same is rebuttable. On appreciation of evidence, the learned trial court has found that the aforesaid presumption stands rebutted. Merely because execution of the mortgage deed in favour of the complainant for a sum of Rs.8,00,000/- has been admitted, the aforesaid presumption cannot be extended to the fact that liability under the cheque has also been admitted. Hence, there is no ground to interfere.

Dismissed.

July 02, 2019 **(ANIL KSHETARPAL)**
nt **JUDGE**

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