

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-2361-MA-2018
Date of Decision: 13.11.2019

Dr. Priya Kansal

.....Applicant

Versus

Naveen Kansal

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. J.S. Cooner, Advocate, for the applicant.

Harnaresh Singh Gill, J.

The complainant (applicant herein) has filed the present application under Section 378(4) Cr.P.C. for grant of special leave to appeal against the judgment dated 21.7.2018, vide which complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') has been dismissed and the respondent has been acquitted of the charge framed against him.

As per the applicant, she being a practicing Doctor, purchased a Car make Honda Amaze in the year 2014 and at that point of time, the respondent was a salesman in the show room of the Honda Amaze Car. The respondent, approached the applicant regarding the remaining outstanding amount. Accordingly, an amount of Rs.2,37,000/- was given in cash to the respondent as the remaining payment of the car and the respondent had assured the applicant that after depositing the said amount, he would hand her over the receipt. It is further

the case of the applicant that after a few days, a message was received from the show room of the car that no amount had been received. On asking of the applicant, respondent had admitted his mistake and after a great persuasion he had issued cheque No. 000004 dated 22.5.2015 for Rs.2,37,000/-, but the said cheque was dishonoured for want of sufficient funds. Even after issuance of the legal notice, due amount had not been paid.

After recording of the preliminary evidence, the respondent was summoned to face the trial and pursuant to the notice of accusation, the respondent pleaded not guilty and claimed trial.

The Trial Court while acquitting the respondent has drawn a conclusion that though there are presumptions against the respondent under the Act, yet respondent may not step into witness box to examine himself and the Court can discharge him on the basis of material already on record and that the evidence adduced on behalf of the applicant could be relied upon.

Learned trial Court has further found that the applicant did not place on record the terms and conditions of the agreement with Honda Showroom Management regarding the down payment made by her and under what circumstances, she was allowed to roll out a new car out of the Show Room without paying the full and final payment. It was held as under:-

“11. Coming to the case in hand, after hearing both the learned counsel and after going through the record on case file, this court is of the view that the complainant has miserably failed to prove the guilt of the accused. Though, the presumption arises in favour of the complainant but the

presumption under Sections 118 and 139 of the N.I. Act also could not help the complainant. The facts mentioned in the complaint are that the accused approached the complainant⁵ and demanded the amount of payment of car purchased by the complainant from Elegant Honda Showroom being employee of it. The story of the complainant is unbelievable. First of all, she has not mentioned in the complaint that what were the terms and agreement between Elegant Honda Showroom and her. Whether it was agreed term between them that down payment is to be collected from her house by the employee of Elegant Honda. It is further unbelievable that without taking down payment how she was allowed to take the car out of the Elegant Honda Showroom. No evidence has been placed on case file in this respect by the complainant. It is also unbelievable that when she handed over the amount in question to the accused, she did not inquire even telephonically from the Elegant Honda, whether to make payment of huge amount to the accused or not. Further, no complaint ever made by the complainant to the police or to the Elegant Honda. No receipt of money was taken from the accused. The complainant has stated in the complaint that accused had admitted in presence of showroom owner and Incharge of Showroom that he has spent the alleged money and had also assured that he would return that money to the complainant. But no witness examined by the complainant to this effect. Thus, in the present case, one of the ingredients of Section 138 of the N.I. Act that there must be legal debt or liability against the accused is missing. The complainant failed to prove that the complainant has taken the alleged amount from her. There is no document or oral evidence on file except complainant's interested testimony. Further, accused examined DW1 and DW2 in his favour. DW1 Sh. Parvinder Singh,

Branch Operation Manager, who in his examination-in-chief stated that the accused had deposited amount of Rs.1,04,000/- in the account of the complainant since 4.10.2014 upto 23.2.2015. The present complaint was filed on 3.7.2015 but complainant did not mention this fact in the present complaint regarding the payment of above stated amount deposited by the accused in her account. Thus, it clearly reveals that the complainant has not come to the court with clean hands. She has not disclosed the whole facts to the court and also could not explain that why the above stated amount of Rs.1,04,000/- was credited to her account by the accused especially in view of the fact that the accused has taken the defence that he had deposited the said amount in the account of the complainant with a view to make the payment of the chit fund which was being run by the complainant. DW2, Sales Manager of Elegant Honda proved the documents Ex. D5 to Ex.D13 and Mark X and Y. But cross-examination of this witness does not reveal anything favourable to the complainant.”

Learned counsel for the applicant submits that the cheque in question was duly proved as Ex. E1. It is further contended that the said cheque was issued by the respondent in discharge of his legal liability and hence the complainant had rightly filed a complaint against this legally enforceable debt. It is further the case of the applicant that the respondent did not respond to the legal notice (Ex.C3) which shows that liability had been admitted by the respondent.

I have heard learned counsel for the applicant at length and have also gone through the case file.

There is no doubt that there is a presumption against the accused but in the present case the said presumption is rebuttable. Even though the respondent did not step into the witness box yet on the basis of the material on record the Court can find out whether the story set up by the applicant is believable and trustworthy.

No document has been placed before the trial Court indicating the understanding with the Honda Showroom Authorities that a new car was allowed to roll out of the show room without full and final payment or there was any undertaking in writing that part payment was to be made. The trial Court while passing the impugned judgment has relied upon the judgment of the Supreme Court in the case of M.S.Narayana Menon @ Mani Vs. State of Kerala, 2006 CrI.L.J. 4607, wherein it has been held that once the accused has discharged the initial burden placed upon him, the burden of proof then reverts back to the complainant. In the instant case, the presumption under Sections 118 and 139 of the Act against the respondent, was found to be of no help to the applicant.

No receipt of the cash amount was received from the respondent while handing over the same, whereas the respondent had examined the Branch Manager and Dara Singh as DW1 and DW2 and their statements went un-rebutted as respondent had deposited the amount of Rs.1,04,000/-in the account of the applicant from 4.10.2014 to 23.2.2015, whereas the present complaint was filed on 3.7.2015 without mentioning those facts.

It could not be pointed out that the learned trial Court has misread or misinterpreted the evidence while passing the impugned judgment. Still further, I do not find any perversity or illegality in the impugned judgment, which may warrant interference by this Court in the present application.

In view of the above, the present application is dismissed. Special Leave to appeal is declined.

(HARNARESH SINGH GILL)
JUDGE

13.11.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No