

CRM-A-240-MA-2018(O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-240-MA-2018(O&M)
Date of decision: 20.11.2019

M/s Balak Ram Subhash Chand and another
.....Appellants

Versus

Satish Kumar
.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Rajinder Goyal, Advocate for the appellants

None for the respondent

ANIL KSHETARPAL, J. (ORAL)

Although inspite of service of notice, respondent is not present. However, this Court has heard learned counsel for the appellants at length and perused the record. In the present case, Aartiya, running a business of commission agency at New Grain Market, Kaithal had filed a complaint against a farmer who used to sell his produce through the commission agency. It has been claimed that the accused Satish Kumar issued a cheque of Rs.4,30,000/- in discharge of his legal liability as he had borrowed a sum on 28.1.2015. Learned Judicial Magistrate on appreciation of evidence has concluded as under:-

“I have heard the contentions of both the parties. Accused Satish Kumar has examined Pataso Devi as DW1, who has deposed about the settlement and payment of Rs.2,00,000/- to complainant Balak Ram and his son Pankaj on 27.1.2017. She has further stated that

the amount of Rs.1,92,000/- was withdrawn from her bank account and a sum of Rs.8,000/- was borrowed from Pala Ram. Her testimony is duly corroborated by testimony of DW2 Pala Ram and Ex. DW2/A statement of her bank account wherein an entry of withdrawal of amount of Rs.1,80,000/- and Rs. 12,000/- on the said date. Further, there is nothing in their cross examination to disbelieve the testimony of the said witnesses. It is argued by learned counsel for the complainant that accused has produced no document and no receipt qua the alleged settlement made. It is admitted fact that relationship between the parties is of commission agent-farmer and the complainant firm is in dominant position. Further owing to fiduciary relationship between the parties and both are known to each other from years it is plausible that no written document was executed qua the payment made. Further it is well settled position of law by now that whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is “preponderance of probabilities”. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely. Therefore, accused cannot be put to strict proof of the facts alleged.”

Learned counsel for the appellants submitted that the conclusion drawn by the learned Magistrate suffers from perversity. He submitted that on the daily book accused had put his signatures and thereafter issued the cheque in question for discharge of his liability. He, hence, submits that appellant has established on file that there is due and payable legal liability.

This Court has considered the submissions. Learned Magistrate on appreciation of evidence has taken a possible view which has not been established to be suffering from any perversity. The defence has to prove on the basis of preponderance of probabilities that there is no liability. Thereafter, the onus shifts on the claimant to prove its case beyond shadow of reasonable doubt because the presumption available under Section 139 of the Negotiable Instruments Act stands rebutted. Reference in this regard can be made to three Judges Bench judgment of the Hon'ble Supreme Court in the case of '**Rangappa vs. Sri Mohan**' reported as 2010(11) SCC 441 wherein it has been held that it is permissible for the accused to point out discrepancies as well as contradictions in the evidence led by the prosecution and on the basis thereof contend that the statutory presumption stands rebutted.

In view of the above, there is no ground to grant leave to appeal.

Dismissed.

20.11. 2019

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No