

CRM-A-2475-MA-2017

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-2475-MA-2017

Date of Decision: 27.11.2019

Parveen Jaswal

... Applicant

Versus

Barinder Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Brig. J.S.Jaswal, Advocate,
for the applicant.

Mr. Manoj Pundir, Advocate,
for the respondent.

HARNARESH SINGH GILL, J.

This is an application under Section 378(4) of the Code of Criminal Procedure (for brevity, 'Cr.P.C.') seeking special leave to appeal against the judgment dated 18.08.2017 passed by the learned Judicial Magistrate Ist Class, Jalandhar, vide which complaint under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I.Act'), has been dismissed and the respondent-accused has been acquitted of the notice of accusation served upon him.

The applicant-complainant had filed a complaint under Section 138 of the N.I.Act averring therein that he had good relationship with the respondent-accused, who had taken financial assistance of Rs.1,25,000/- from him. In order to discharge his legal liability, the respondent had issued

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the applicant. However, when presented in the bank for encashment, the same had got dishonoured and had been returned vide memo dated 12.10.2012 with the remarks '*Payment Stopped by Drawer*'. Thereafter, a legal notice had been served upon the respondent requesting him to make the payment, but to no avail.

After recording the preliminary evidence, the respondent was summoned under Section 138 of the N.I.Act.

However, in his statement under Section 313 Cr.P.C., the respondent had denied all the allegations. Rather, he stated that he was the employee of the complainant, who had taken three blank cheques as security for employment. Even after leaving the job by the respondent, the cheques had not been returned to him and rather misused by the applicant.

The trial Court had carved out the following points for determination:

- “1. Whether the accused in discharge of legally and enforceable liability issued cheque bearing No.004073 dated 11.10.2012 for a sum of Rs.1,25,000/- to discharge the legal financial liability towards the complainant?
2. Whether the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act?

The trial Court while taking into consideration the version of the applicant in the complaint and in evidence that the respondent had been given money for financial assistance and the cheque in question was given by the respondent in discharge of his liability and further while taking into

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consideration the plea of the respondent that blank cheques were given by the respondent as security, because he was given employment by the applicant, has drawn a conclusion that even the presumption is towards the applicant and when the same is countered the said presumption is always rebuttable. The trial Court has also considered the fact that after leaving the job by the respondent, the applicant had given financial help to the respondent and one another employee, Kamaljit Singh against whom a similar complaint had been filed by the applicant. Both of them were working at a very meagre salary. After considering all these facts, the complaint was dismissed.

Aggrieved of the aforesaid judgment, the present application seeking special leave to appeal has been filed.

I have heard learned counsel for the parties and with their able assistance, have gone through the judgment of the court below.

Learned counsel for the applicant has argued that the respondent had good relations with his earlier employee and thus, the financial assistance of Rs.1,25,000/- had been given to him. To discharge his legal liability, the respondent had issued the cheque, which had been returned with the remarks 'Payment Stopped by Drawer'. Even after issuance of legal notice, the payment had not been made. He further contended that the applicant had proved the case beyond the shadow of reasonable doubt by placing on record the memo dated 12.10.2012 that payment had been stopped, whereas the respondent had not placed on record any documentary evidence and evidence of the respondent was closed by order. The case of another employee Kamaljit Singh is a separate issue. In

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the present case, the respondent had led no evidence to rebut the case of the applicant. Even the trial Court has drawn a conclusion that witness of the respondent i.e. DW 2 MHC Gurinder Singh does not support of the version of the respondent.

It is still further argued that the trial Court did not take into consideration that the period of nine months' delay in filing of the complaint to the police, was not explained. As a matter of fact, giving of cheques as security is totally a concocted story because the evidence on record does not support the case of the respondent.

Learned counsel for the applicant has relied upon the judgment dated 02.07.2018 rendered by the Hon'ble Supreme Court in Criminal appeal No.803 of 2018 (arising out of SLP (Crl.) No.10030 of 2016), titled as 'Kishan Rao Vs. Shankargouda', to contend that the accused may adduce evidence to rebut the presumption, but mere denial regarding existence of debt does not serve any purpose especially when the applicant proves the issuance of cheque with the signatures of the respondent/accused on it.

Per contra, learned counsel for the respondent has argued that it was admitted by the applicant that Kamaljit Singh had been one of his employees and against him also, a complaint had been filed. In this case, the blank cheque while taking security at the time of hiring the employees, has been misused by the complainant. It is further argued that the respondent, who is an ex-employee of the complainant, was getting the meagre salary of Rs.5500/-. Therefore, it is not digestible that such a heavy amount of Rs.1,25,000/- can be given as a financial loan. In support of his contentions, learned counsel relied upon Vijay vs. Laxman and another

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2013 (1) R.C.R. (Civil) 980 wherein it has been held that if the accused admits his signatures on the cheque, but is able to prove that the same was given for security, the conviction is not sustainable.

Learned counsel for the respondent has further contended that though the presumption is in favour of the holder of the cheque that the same has been issued to him in discharge of debt or legal liability, yet the same is rebuttable keeping in view the facts and circumstances and evidence on record. In support of his contentions, the learned counsel relied upon Krishna Janardhan Bhat Vs. Dattatraya G. Hegde 2008 (1) R.C.R. (Criminal) 695.

After hearing the learned counsel for the parties and going through the record of this case, I agree with the contentions raised by the learned counsel for the respondent.

To my mind, the respondent, who was an employee with the applicant on a meagre pay of Rs.5500/-, left the job in March, 2012 and for the financial assistance, lending of Rs.1,25,000/- without any receipt does not appeal to the common prudence, especially so when the applicant had admitted that at the time of giving employment to a worker, security used to be taken by him.

Also merely on the presumption as contemplated under the N.I.Act, the liability cannot be fastened upon the respondent-accused. In M.S. Narayana Menon v. State of Kerala, (2006) 6 SCC 39, while dealing with that aspect in a case under [Section 138](#) of the N.I.Act, the Hon'ble Supreme Court held that the presumptions under [Sections 118\(a\)](#) and [139](#) of the Act are rebuttable and the standard of proof required for such rebuttal is

preponderance of probabilities and not proof beyond reasonable doubt. The Court observed:

“29. In terms of Section 4 of the Evidence Act whenever it is provided by the Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. The words “proved” and “disproved” have been defined in Section 3 of the Evidence Act (the interpretation clause)...

30. Applying the said definitions of “proved” or “disproved” to the principle behind Section 118(a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.

xx xx xx

32. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies.

xx xx xx

41...Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'.”

Consequently, I do not find any ground to grant special leave to appeal. Therefore, finding no merit in the present application seeking special leave to file appeal, the same is dismissed. Special leave to appeal is declined.

27 .11.2019
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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