

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-498-MA-2018(O&M)

Date of decision: 25.11.2019

Palwinder Kaur

.....Appellant

Versus

Amit and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Govind Chauhan, Advocate for the appellant

ANIL KSHETARPAL, J.

CRM-7251-2018

Delay of 6 days in filing the appeal is condoned for the reasons stated in the application. CRM stands disposed of.

Main case

Application for special leave to appeal has been filed against judgment of acquittal passed by the learned Magistrate dismissing the criminal complaint filed under Section 138 read with Section 142 of Negotiable Instruments Act, 1882. On dishonour of cheque bearing no.621700-dated 28.9.2016 for an amount of Rs.3 lacs drawn on State Bank of Patiala, proceedings under Section 138 of the Negotiable Instruments Act were initiated.

On appreciation of the evidence, learned Magistrate has recorded following reasons to dismiss the complaint:-

i) The amount of Rs.3 lacs, is alleged to has

been paid to the accused, as a friendly loan, however, there is

no document or writing.

ii) Appellant is not an earning member. She is said to have extended the friendly loan of Rs. 3 lacs in cash, particularly, when she does not know for how long she is known to the accused. In cross-examination she admitted that she is not aware whether accused is known to her for the last 5 years or 10 years or 15 years.

iii) It is alleged by the complainant that the cheque amount was paid in the presence of her family members, however, no one from the family has been produced.

iv) Appellant has failed to show her financial capacity to extent the loan of Rs. 3 lacs.

Alongwith the application for special leave to appeal, appellant has sought to produce a copy of Bank account statement to prove that appellant had been withdrawing various amounts on different occasions. However, no transaction is for a sum of Rs. 3 lacs. The alleged loan is of June, 2015. On 6.5.2015 appellant withdrew Rs. 1 lac. In the month of June, 2015 there are only three entries of cash withdrawal amounting to Rs.5,000/-, Rs. 4,000/- and Rs. 5,000/-. In the month of June, she withdraws Rs. 2 lacs on 22.6.2015 and thereafter, on 23.6.2015 she withdraws Rs.5,000/-. These entries do not prove that in cash, friendly loan of Rs. 3 lacs was given to the accused.

Learned counsel for the appellant submitted that once the signatures on the cheque in question are proved, presumption under Section 139 of the Negotiable Instruments Act comes into operation and therefore, it was incumbent upon the accused to prove his defence by leading evidence.

This Court has considered submissions of the learned counsel for the appellant. Presumption under Section 139 of the Negotiable Instruments Act is rebuttable. Such presumption can also be rebutted by pointing out improbabilities in the evidence led by the prosecution. This is now well settled. A larger Bench of the Hon'ble Supreme Court in the case of **Rangappa vs. Sri Mohan** reported as 2010(11) SCC 441 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 the statutory presumption can stand rebutted. In the present case, it has been laid down that the defence has to prove its defence by preponderance of probabilities and thereupon onus shifts on the complainant to prove its case beyond the shadow of reasonable doubt. As noticed above, the Magistrate after appreciation of evidence has found that complainant has failed to discharge the aforesaid onus. Hence, no ground to grant special leave to appeal is made out. Dismissed.

25 .11. 2019

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)**JUDGE**

Yes / No

Yes / No