

CRM-A-417-2019

Date of decision: 06.02.2020

PARAMJIT CHAND

...PETITIONER

VERSUS

PRIYA RANI

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Arun Sharma, Advocate for
Mr. R.S. Bajaj, Advocate
for the petitioner.

None for the respondent.

VIVEK PURI, J. (ORAL)

The applicant had instituted the complaint under Section 138 of Negotiable Instruments Act on the allegations that the respondent had borrowed a sum of Rs. 4,40,000/- for purchase of X-Ray machine in the month of May, 2016 and to discharge of the said legal liability the cheque in question for Rs.4,40,000/- was issued. Subsequently, the father-in-law of the respondent had returned a sum of Rs. 40,000/- to the complainant and for the remaining amount of Rs. 4,00,000/- the respondent, her husband and father-in-law had issued cheques separately in favour of the petitioner.

The respondent in discharge of partial liability had issued a cheque for Rs. 2,00,000/- and on presentation the same had been dishonored with the remarks 'funds insufficient'. After issuance of statutory notice the complaint was instituted. The respondent was summoned to face trial and the complainant had examined herself to substantiate the allegation. The statement of the respondent under

Section 313 Cr.P.C. was recorded but no evidence was led by her. The trial of the case culminated in the acquittal of the respondent.

Feeling aggrieved, the present petition has been instituted seeking leave to file appeal.

A perusal of the impugned judgment indicates that the petitioner was not having financial capacity to pay a huge amount of Rs. 4,40,000/-. It has been observed that the petitioner during her cross-examination has admitted the fact that her husband was earning Rs.10,000-12,000/- per month from which he has to maintain family of six members and even the entire income of her husband is spent in meeting day-to-day expenses and furthermore, the petitioner herself is not doing any work being a housewife. As such the financial capacity of the petitioner to lend the amount was doubted.

Furthermore, it has been observed that two withdrawals for Rs. 1,00,000/- each on 22.08.2015 and on 30.05.2016 and 31.05.2016 were made from the joint account of the complainant as well as her husband.

It has also been observed that the cross-examination of the petitioner was only partially recorded. Her further cross-examination was deferred but she never turned for further cross-examination.

In such circumstances, the statement devoid of complete cross-examination cannot be looked into to settle the controversy and is not liable to be relied upon. She has admitted the fact that she never advanced any money to the respondent on her behalf and there was no liability or legally enforceable debt of the respondent towards her and the respondent had taken the money from her husband.

It may be mentioned here that in an appeal against acquittal, if two views are possible and the Court below has acquitted the accused, the

other view is also possible. The Appellate Court cannot substitute its reason or possible view, if the view of the learned trial Court while acquitting the accused was the possible view. Furthermore, the acquittal of the accused also bolsters the presumption of their innocence.

In such circumstances, the view taken by the learned trial Court appears to be reasonable and probable and does not suffer from any perversity , illegality or error which may call for any interference or indulgence of this court.

Leave to appeal is declined.

06.02.2020
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(VIVEK PURI)
JUDGE

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