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

CRM-A-579-MA of 2017
Date of Decision: 06.03.2020

Inderjit Singh

...Applicant

Versus

Karnail

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. A.K. Khubbar, Advocate, for the applicant.
Mr. Sandeep Lather, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

Through this application under Section 378(4) Cr.P.C. prayer has been made by the complainant seeking leave to appeal against judgment dated 13.01.2017 of the trial Court.

Briefly, applicant filed a complaint against the respondent under Section 138 of the Negotiable Instruments Act (in short the 'Act') pleading that respondent had issued a cheque of ₹1,50,000/- to him to discharge his legal liability, which on presentation in the bank, was returned unpaid with the remarks “exceeds arrangement”. Thereafter, mandatory legal notice was served upon the respondent. Despite that respondent did not make the payment.

Upon notice, respondent appeared and took the defence that cheque in question was handed over by him to the applicant as a security and not in discharge of legal liability.

Trial Court, after holding trial, dismissed the complaint of the applicant vide impugned judgment dated 13.01.2017.

Learned counsel for the applicant *inter alia* contends that trial Court failed to appreciate that respondent-accused could not rebut evidence led by the applicant. Thus, trial Court, drawing presumption in favour of the applicant under Sections 118 and 139 of the Act ought to have accepted complaint in toto.

Refuting above submissions and pleading legality and validity of the impugned judgment, learned counsel for the respondent contends that statement of the applicant before the trial Court as CW1 was contradictory in itself, which falsified his claim, because according to applicant, cheque in question was issued by the respondent-accused to him in the month of April, 2013, but in cross-examination, he controverted his aforesaid statement, deposing that same was issued in the month of October, 2013.

Having given thoughtful consideration to the rival submissions, leave to appeal is granted and this Court finds the appeal merits acceptance for the reasons to follow.

Respondent-accused to rebut the evidence led by applicant, examined his real brother Satish Kumar @ Silu, who while appearing as DW1, tried to create a dent in the stand taken by the applicant, but could not do so. According to him, applicant was a contractor of supplying sugarcane to different sugar mills situated at Shahabad and Morthala etc. He and respondent-accused were having tractors/vehicles and used to transport sugarcane to the sugar mills under the contractorship of the applicant. There was a written agreement in between them, various other transporters and the applicant. Applicant used to take cheques from every transporter as a security. He had also given cheques as security to the applicant, but on noticing that even after receipt of money, applicant was not returning cheques, he took back his cheques from the applicant. His brother, respondent, had also returned money to the applicant. In turn, applicant promised to return the cheque in question within two three days, but he did not return the same.

Above story put forth by DW1 Satish Kumar does not appeal to reason, being patently false, on the face of it, inasmuch as in case, respondent-accused had not taken any loan from the applicant, in that eventuality, there was no question of return of any amount to the applicant by the respondent, as has been testified by his own brother DW1 Satish Kumar. Above deposition of DW1 Satish Kumar also falsifies the story of respondent-accused that cheque in question was handed over by him to the applicant as security, inasmuch as in that eventuality also, there was no question of return of money by him.

As far as contradiction in the statement of applicant qua issuance of cheque to him by respondent-accused is concerned, same relates to insignificant aspect of the case, inasmuch as respondent-accused admitted his signature on the cheque in question. He even did not respond to the legal notice served upon him by the applicant, which amounted to his admission qua taking of loan from the applicant.

No agreement whatsoever was produced by the respondent-accused or his brother DW1 Satish Kumar to show that applicant used to obtain cheques as security from the transporters, including them. Thus, bald statement of DW1 instead of helping the respondent-accused has falsified his defence.

In view of above factual aspect of the case, it is apparent that trial Court has illegally not drawn presumption under Sections 118 and 139 of the Act in favour of the applicant, despite having no rebuttal to the evidence led by the applicant.

In view of discussion made above, appeal is allowed. Respondent is held guilty under Section 138 of the Act.

Parties are directed to appear before the trial Court on 23.03.2020 for hearing the respondent-accused on quantum of sentence.

(RAMENDRA JAIN)
JUDGE

March 06, 2020
R.S.

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No