

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1312 of 2021**

Narendra Kumar Sharma S/o Shri ShivBhagwan Sharma, Presently aged about 68 years, Occupation Businessman R/o Kailash Nagar, District Rajnandgaon (C.G.).

---- Petitioner

Versus

Sandeep Shrivastava S/o Durga Prasad, aged about 54 years, Proprietor Mahavir Enterprises R/o Janta Colony, District Rajnandgaon (C.G.).

--Respondent

For Petitioner	:	Mr. Nitesh Jain, Advocate
For Respondent	:	None

Hon'ble Shri Justice Deepak Kumar Tiwari
Order on Board

08/12/2021

1. The instant CRMP has been preferred for grant of special leave to appeal against the judgment dated 07/08/2021 passed by the learned JMFC in Criminal Case No. 1472/2017, whereby the learned trial Court has acquitted the respondent from the charges framed under Section 138 of the Negotiable Instrument Act.
2. Brief facts of the case are that the complainant and the respondent are acquainted with each other since 2004. On the request of respondent/accused the complainant had given his shop to him for the purpose of business. In the said business, the complainant was the sleeping partner. The business was being carried out in the aforesaid shop. The respondent, being in need of money for commercial purpose to run the

shop, requested the Complainant to give some loan. On various occasions, total amount of Rs. 2,00,000/- has been taken as loan by the respondent from the complainant. For repayment of the said loan, the respondent handed over a cheque bearing No. 004758 dated 30/11/2016 of ICICI Bank to the Complainant. When the said cheque was submitted for encashment before the Central Bank of India, it got dishonored by the bank. The complainant informed the same to the respondent. The respondent referring to warm relationship between them, requested him to represent the cheque again before the Bank on 04/02/2017. When the said cheque was deposited again for encashment, it got dishonored again. Thereafter, the Complainant sent a legal notice to the respondent on 03/04/2017 demanding payment of cheque amount, to which the accused replied and accepted to take loan of Rs. 3 lakhs from the Complainant, however, he denied the payment on vague and unsustainable grounds. Thereafter, the complaint has been filed.

3. The Court below after hearing the parties and appreciating the evidence on record passed the impugned order and acquitted the respondent. Hence, this CRMP.
4. Counsel for the petitioner submits that the trial Court has misdirected itself in not appreciating the relevant provisions of the Negotiable Instruments Act, 1881, therefore, the order of acquittal passed by the trial Court requires to be interfered.
5. I have heard counsel for the petitioner and perused the case.

6. Complainant Narendra Kumar Sharma admitted in para 16 of his cross-examination that he had not mentioned the date and month on which the amount of loan had been given to the accused in the notice. In the notice (Ex.P-3), it has been stated that the accused had taken loan of Rs. 6 lakhs for his business requirement and given three different cheques. Neither in the complaint nor in the examination-in-chief of the complainant, he stated about the date on which the loan was given to the accused. He stated in the complaint that in the year 2004 accused had taken loan of Rs. 2 lakhs and in examination-in-chief, loan of Rs. 1 lakh was stated which had been taken by the accused in the year 2000. So the evidence adduced by the complainant himself has not supported the complainant's case. The transactions made with respondent for the money advanced by the complainant, is not clearly established by the Complainant. Therefore, the trial Court has rightly come to the conclusion that the Complainant has not come with clean hands.
7. *In Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513* , it has been observed in para 20 :

“The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by

consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act”

8. **In Krishna Janardhan Bhat Vs. Dattatraya G. Hegde, (2008) 4 SCC 54,** it has been held that an accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. Following has been laid down in Paragraph No.32:-

“32. An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different.”

9. In **Rangappa Vs. Sri Mohan, (2010) 11 SCC 441**, it has been held that If the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.
10. After appreciation of evidence, the trial Court has rightly arrived to the conclusion that the complainant has failed to prove the debt of the complaint. On the aforesaid appreciations, this Court also confirm the said conclusion drawn by the trial Court that the transactions between the complainant and the accused are not clear and the complainant has also failed to produce the evidence about source of money.
11. Consequently, the judgment of acquittal passed by the trial Court is not perverse, illegal and improper and the same does not call for any interference. The CRMP is, accordingly dismissed.

Sd/-
(Deepak Kumar Tiwari)
Judge