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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A No.87 of 2020
Date of decision : 19.12.2022

Neha Mahajan

....Applicant

Versus

Avneet Oberoi

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vikas Chaudhary, Advocate
for the applicant.

PANKAJ JAIN, J.

Complainant has filed present application seeking leave to appeal against the judgment dated 24th of October, 2019 passed by Judicial Magistrate 1st Class, Chandigarh dismissing the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act').

2. Applicant preferred complaint claiming that she owns business being run under the name and style of M/s Kidzilla and Cafe Green Olive at SCF 65-66, Phase-10, Mohali. Accused No.1 approached the complainant to run the said business under the existing name and style in consideration for the profit of Rs.60,000/- per month payable to the complainant by the accused besides rent for the said premises i.e. Rs.88,400/- per month, property tax, electricity and water bills. The complainant agreed and inducted the accused along with another Ms. Diksha Sharma D/o Ashok Sharma R/o # 1231, Sector 21-B, Chandigarh as operational partners. That

an MOU was signed between the complainant being the First Party, the accused No.1 and Ms. Diksha Sharma D/o Sh.Ashok Sharma R/o # 1231, Sector 21-B, Chandigarh being the second party. Later Ms. Diksha Sharma left the said arrangement with the consent of the accused No.1 and the complainant has not raised objection to this. The accused was to be known as one of the operational partners as per the said MOU. Initially the accused No.1 appeared to be a good operational partner, but very soon he started making default in performing his part of the contract known as the MOU. Arrears started mounting against the accused and the complainant was forced to follow up with the accused for the dues payable to the complainant. After continued follow up, the accused in order to discharge their legal liability (in part), issued a cheque No.773124 dated 25th of May, 2018 amounting to Rs.7,72,900/- drawn on Corporation Bank, Chandigarh in favour of complainant with an assurance that the same would be encashed as and when presented. Complainant presented the Cheque in question for encashment but it was dishonoured by the banker of the accused vide memo dated 29th of May, 2018 with the remarks of "Payment stopped by Drawer". Thereafter, legal notice dated 25th of June, 2018 was sent through registered post calling upon accused to make the payment within 15 days from the receipt of notice but accused failed to make the payment.

3. After the preliminary evidence, respondent was summoned to face trial. Complainant herself did not enter into witness box but opted to

testify through her power of attorney who stepped into witness-box as CW-1. Respondent-accused in his defence statement testified as under :

> "I am innocent and has been falsely implicated by the complainant in the present complaint. The present complaint is not maintainable being filed without any cause of action. I am working with the complainant as care taker of Kids Zilla. After sometime, complainant allowed me to use the roof top with his own expenses and equipments, at that time one blank signed security cheque was taken by the complainant from me. I have sent a email on 14.3.2018 to the husband of complainant regarding my expenses of last 15 months which comes to Rs.7,40,410/-. Thereafter, the complainant has misused the blank signed security cheque in question on 25.5.2018 just to cover or not to pay the liability of Rs.7,40,410/- to me. I have no legal liability towards the complainant. I am not liable to pay any alleged amount to the complainant. The complainant has filed a false complaint against me, moreover, the complainant herself not appeared in person to prove her complaint. CW-1 Abhay Mahajan never dealt with the accused and he is not fully competent and conversant with the facts of the present case. The present complaint may kindly be dismissed."

4. Trial Court after analysing the evidence found that the complainant has not been able to prove her case as the MOU (Exhibit C-1) which lies at the heart of controversy could not be proved.

5. Ld. Counsel for the applicant while assailing the judgment of acquittal passed by the Court below strongly relies upon presumption in favour of the complainant as contemplated under Section 139 of the Act. He further submits that the MOU was proved on record and was an exhibited document thus, Trial Court ought not have discarded the same.

6. I have heard counsel for the applicant and have gone through the records of the case.

7. As per the law laid down by Three-Judge Bench of Supreme Court in **Rangappa Vs. Sri Mohan, (2010) 11 SCC 441,** the presumption under Section 139 of the N.I. Act is rebuttable. The accused can well rely upon evidence adduced by the complainant to rebut such presumption. In the present case, Trial Court found that the respondent-accused has fully proved on record the falsity of the claim of the complainant by producing on record e-mail (Exhibit DX-11) and held as under :-

> "It is defence of Ld. Defence Counsel that accused has sent a email on 14.3.2018 to the husband of complainant regarding his expenses of last 15 months which comes to Rs.7,40,410/-, thereafter the complainant has misused the blank signed security cheque in question on 25.5.2018 just to cover, or not to pay the liability of Rs.7,40,410/-. Complainant admitted in his cross-examination that he is having e-mail ID i.e. abymahajan19@gmail.com. Perusal of email Ex.DX-11(colly) indicates that same was sent by accused Avneet to the email ID i.e. abymahajan19@gmail.com of Abhay Mahajan (husband of complainant). The Cheque in question is dated 25.5.2018 amounting to Rs.7,72,900/- whereas accused has sent a email on 14.3.2018 to the husband of complainant regarding his expenses of last 15 months which comes to Rs.7,40,410/- but the same has not been deducted by complainant and has misused the cheque in question by filing the present complaint. Power of Attorney of Complainant stepped into witness box but he has not disclosed anything regarding deduction of the said amount in his crossexamination. CW-1 submitted in his cross-examination that "I do not remember if, any email was received by me or not from

> the accused Avneet on 14.3.2018. I do not remember if, any reply was done by me or not." Witness examined by complainant did not have any personal knowledge regarding entries made in the statement of account and were therefore not competent to depose about correctness of entries. Accused also tendered Certificate u/s 65-B Indian Evidence Act Ex.DX-10. As per Evidence Act, Section 65B(4) giving of statement in any proceedings pertaining to an electronic record is permissible. The said email tendered by the learned counsel for the accused is proved as per the requirements and parameters of Section 65-B of Evidence Act as there is certificate under Section 65-B of Evidence Act."

8. Ld. Counsel for the applicant has not been able to point out any evidence on record to warrant interference by this Court. The scope of the appeal also stands culled out by the Apex Court in **Chandrappa and ors. vs. State of Karnataka, 2007 (2) RCR (Criminal) 92** wherein it was held that :-

> "(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;
>
> (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;
>
> (3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own

conclusion.
(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

(emphasis supplied)

9. Similarly in the case of **Kishan Rao vs. Shankar Gouda, (2018) 8 SCC 165** relying upon the law laid down in **Rangappa's** case *ibid* it was held that it is not necessary for the accused to lead evidence in defence to rebut the presumption. Same has been reiterated in **ANSS Raja Shekhar vs. Augustus Jeba Ananth, (2019) SCC Online SC 185.**

10. As a sequel of the discussion held hereinabove, no fault can be found with the judgment passed by the Trial Court dismissing the complaint filed by the applicant u/s 138 of the N.I. Act. Consequently, the present application seeking leave to appeal is dismissed.

December 19, 2022 **(PANKAJ JAIN)**
Dpr **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No