229 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-7483-2019 in/and
CRM-A-503-MA-2019
Date of Decision: 5th August, 2022

Dr. Suneet Bajaj

... Applicant

Versus

Satish Kumar Chauhan

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Ms. Ritu Manohar, Advocate for
Mr. A.S. Ghangas, Adocate for hte applicant.

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AVNEESH JHINGAN , J.(Oral)

1. This is an application for grant of leave to appeal against judgment of acquittal in Complaint No. 571 of 2018, under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'). The application is accompanied by an application for condoning the delay of 86 days.

2. As per the case set up, the respondent (accused) was having friendly relationship with the applicant and he used to borrow amount for personal use. The accounts were reconciled and Rs.10,10,000/- was found due. To discharge the liability four cheques were issued. The cheque in question in the present application is bearing No. 219600, dated 15th January, 2016 of IDBI Bank, Panipat for a sum of Rs.1,50,000/-

3. On presentation, the cheque was dishonored on 3rd February, 2016 with the remarks 'funds insufficient'. After serving the notice, the complaint was filed.

4. To substantiate the pleadings, complainant himself deposed, filed an affidavit, examine the Assistant Manager of Bank and relied upon the documents.

5. The accused denied the allegations, it was stated that the wife of the respondent had friendly relations with the wife of the complainant, later on the relation was strained. The wife of the complainant stole the cheque from the house of the respondent and it was misused. It was denied that no debt or other legal liability was due on date of presentation of the cheque.

6. In the cross-examination the complainant faultered as he was not able to separate the money transaction of the wife of the respondent and the complainant. It was claimed that at the time advancing the money, transactions were reduced in writing but at the time of final settlement the writings were destroyed. The reliance was placed upon the settlement drafted on a stamp paper which was not attested. There was no witness to the settlement. The applicant failed to specify the date, year, month and the amount allegedly borrowed by the respondent. Even he was unable to give the exact amount borrowed by the respondent or his wife. The version putforth was found doubtful, the respondent was acquitted.

7. Learned counsel for the applicant submits that the cheque was signed by the respondent. There was a debt due, the trial court erred in acquitting the respondent.

8. There is no quarrel on the proposition that the presumptions under Sections 118 and 139 of the Act are in favour of the holder of the cheque but are rebuttable. The onus on the accused in proceedings under Section 138 of the Act is not as strict as on the prosecution. The defence has to be reasonably probable. Once the presumptions are rebutted by the accused the onus shifts on the complainant.

9. The view taken by the trial Court is a plausible view. It was noted that applicant claimed that written documents were executed while advancing the loan but the same were destroyed at the time of settlement of the accounts. The stand taken was found to be doubtful. Complainant could not withstood cross-examination. He failed to segregate the loan advanced to respondent by him and his wife. He was not able to specify the amount lended to respondent. The settlement deed relied upon was neither attested nor there were attesting witnesses to the document. The signatures on the cheque itself is not enough for conviction under Section 138 of the Act. The applicant failed to discharge the onus casted upon after rebuttable of the presumption under Section 118 and 139.

10. No case is made out for grant of leave, as no legal or factual error, much less perversity has been pointed out in the impugned judgment.

11. Since the main application has been dismissed, pending applications are disposed of as infructuous.

(AVNEESH JHINGAN)
JUDGE

5th August, 2022
Parveen Sharma

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