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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AS-43-2020
CRM-29894-2017
Date of Decision: 21.12.2022

AJAY SINGH

…Appellant

Versus

P.K. AHLAWAT

…Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. V.D. Sharma, Advocate
for the Appellant.

Mr. B.S. Rana, Senior Advocate
with Mr. Nayandeep Rana, Advocate
for the respondent.

HARSH BUNGER, J.

The instant appeal has been filed against the impugned judgment dated 14.07.2017 passed by learned Judicial Magistrate 1st Class, Panipat, whereby complaint filed by the appellant-complainant under Sections 138/142 of the Negotiable Instruments Act has been dismissed and the respondent has been acquitted.

Brief facts of the case are that the appellant-complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 alleging that he and respondent-accused were known to each other and had cordial relations. In the month of April, 2012, the respondent-accused was in need of Rs.4,00,000/-, so he (accused) approached and requested the appellant-complainant and borrowed a sum of Rs. 4,00,000/- from the appellant-complainant in the month of April, 2012 for a period of three months. It was alleged that after expiry of three months, the appellant-complainant demanded the above said amount from the respondent-accused and accordingly to discharge his aforesaid legal liability, the respondent-accused issued a cheque bearing No. 386383 dated 27.07.2012 for a sum of Rs. 4,00,000/- in favour of the appellant-complainant. It was further stated that the appellant-complainant presented the above said cheque to his banker for encashment, however the same was dishonoured by the banker of the respondent-accused vide Memo dated 28.07.2012 with the remarks "Funds Insufficient".

It was stated that a legal notice dated 03.08.2012 was served upon the respondent-accused but despite the receipt of the legal notice, the payment of cheque in question was not made within stipulated period. Thereafter, the appellant-complainant filed the complaint before the learned trial Court.

On the basis of preliminary evidence, respondent-accused was summoned. Subsequently, notice of accusation for commission of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 was served upon the respondent- accused to which he pleaded not guilty and claimed trial.

The appellant-complainant, in order to prove his case, examined himself as CW1 and tendered the following documents :-

Ex.C1	*Cheque bearing No.386383 dated 27.07.2012 amounting to Rs.4,00,000/-*
Ex.C2	*Memo dated 28.07.2012*
Ex.C3	*Legal Notice dated 03.08.2012*
Ex.C4	*Postal Receipt*
Ex.C5	*Acknowledgment*
Mark-CW1/A Statement of account	

Thereafter, statement of the respondent-accused under Section 313 of the Code of Criminal Procedure was recorded wherein he denied all the incriminating circumstances against him and pleaded innocence.

Respondent-accused lead the evidence in defence. He examined himself as DW1. Ajay Deswal, SWO, State Bank of Patiala, was examined as DW2. Harjit Singh, Deputy Branch Manager, SBI Bank was examined as DW3. Anil was examined as DW4. Following documents were placed on record on behalf of respondent-accused :-

Ex.D1	*Authority Letter*
Ex.D2	*Statement of account*
Ex.D3	*Copy of cheque bearing No.386391 dated 27.09.2006 for an amount of Rs.3300/-.*
Ex.D4	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D5	*Copy of cheque bearing No.386394 dated 28.11.2006 for an amount of Rs.11,000/-.*
Ex.D6	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D7	*Cash Deposit Slip form of State Bank of Patiala.*
Ex.D8	*Cash Deposit Slip form of State Bank of Patiala.*
Ex.D9	*Copy of cheque bearing No.386389 dated 08.09.2006 for an amount of Rs.5,000/-.*
Ex.D10	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D11	*Copy of cheque bearing No.386381 dated 28.04.2006 for an amount of Rs.25,000/-.*
Ex.D12	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D13	*Copy of cheque bearing No.386387 dated 23.08.2006 for an amount of Rs.3500/-.*
Ex.D14	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D15	*Copy of cheque bearing No.386382 dated 23.05.2006 for an amount of Rs.3200/-.*
Ex.D16	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D17	*Cash Deposit Slip form of State Bank of Patiala.*
Ex.D18	*Copy of Current Account Pay-In-Slip.*
Ex.D19	*Copy of Current Account Pay-In-Slip.*
Ex.D20	*Copy of cheque bearing No.689560 dated 13.04.2006 for an amount of Rs.3000/-.*

Ex.D21	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D22	*Copy of cheque bearing No.386392 dated 13.10.2006 for an amount of Rs.10,000/-.*
Ex.D23	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D24	*Copy of cheque bearing No.386385 dated 08.08.2006 for an amount of Rs.1500/-.*
Ex.D25	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D26	*Copy of Current Account Pay-In-Slip.*
Ex.D27	*Copy of cheque bearing No.386390 dated 15.09.2006 for an amount of Rs.10,000/-.*
Ex.D28	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D29	*Copy of Current Account Pay-In-Slip.*
Ex.D30	*Copy of Current Account Pay-In-Slip.*
Ex.D31	*Copy of Current Account Pay-In-Slip.*
Ex.D32	*Copy of Current Account Pay-In-Slip.*
Ex.D33	*Copy of Current Account Pay-In-Slip.*
Ex.D34	*Copy of cheque bearing No.386395 dated 25.01.2007 for an amount of Rs.10,100/-.*
Ex.D35	*Copy of cheque bearing No.386396 dated 31.01.2007 for an amount of Rs.3000/-.*
Ex.D36	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D37	*Copy of cheque bearing No.386399 dated 17.03.2007 for an amount of Rs.1000/-.*
Ex.D38	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D39	*Copy of cheque bearing No.386398 dated 06.03.2007 for an amount of Rs.2000/-.*
Ex.D40	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D41	*Copy of Current Account Pay-In-Slip.*
Ex.D42	*Copy of Current Account Pay-In-Slip.*
Ex.D43	*State of account.*
Ex.D44-50	*Copy of Cash Deposit Form*
Ex.D51	*Copy of cheque bearing No.269240 dated 03.10.2006 for an amount of Rs.14,000/-.*
Ex.D52	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D53	*Copy of cheque bearing No.269239 dated 22.08.2006 for an amount of Rs.1600/-.*
Ex.D54	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D55	*Copy of cheque bearing No.269235 dated 06.05.2006 for an amount of Rs.1500/-.*
Ex.D56	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D57	*Copy of cheque bearing No.746824 dated 15.02.2007 for an amount of Rs.4900/-.*

Ex.D58	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D59	*Copy of cheque bearing No.746823 dated 08.02.2007 for an amount of Rs.10,000/-.*
Ex.D60	*Specimen Signatures of accused on the back side of withdrawal cheque.*
Ex.D61	*Copy of cheque bearing No.746822 dated 31.01.2007 for an amount of Rs.5000/-.*
Ex.D62	*Specimen Signatures of accused on the back side of withdrawal cheque.*

The learned trial Court, after appreciating the evidence, dismissed the complaint filed by the appellant-complainant vide judgment dated 14.07.2017 and acquitted the respondent.

In the backdrop of aforementioned facts and circumstances, an application for leave to appeal along with the appeal, was filed before this Court. Application for leave to appeal was allowed by this Court vide order dated 27.01.2020 whereupon, the appeal was numbered as ***CRA-AS-43-2020***.

I have heard learned counsel for the appellant-complainant and gone through the impugned judgment dated 14.07.2017 passed by learned Judicial Magistrate 1st Class, Panipat and also the case file.

Here, it would be apposite to refer to few judicial pronouncements regarding the scope and parameters, in which, interference can be made in a judgment of acquittal.

In ***'Mrinal Das & others v. The State of Tripura, 2011(9) SCC 479'***, Hon'ble Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

"An order of acquittal is to be interfered with only when there are "compelling and substantial

> *reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."*

In the case of ***'Arulvelu v. State represented by the Public Prosecutor, 2009(4) RCR (Criminal) 638'***, the Hon'ble Supreme Court has observed as under:-

> *"39. In* ***GhureyLal v. State of Uttar Pradesh, (2008) 10 SCC 450****, a two Judge Bench of this Court of which one of us (Bhandari, J.)was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above :*
>
> *1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
>
> *2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.*
>
> *3. The appellate court should always keep in mind that the trial court had the distinct advantage of*

watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

40. This Court in a recently delivered judgment ***State of Rajasthan v. Naresh @ Ram Naresh, 2009(11) SCALE 699*** *again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused..."*

In ***'Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748'***, Hon'ble Supreme Court held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

Coming to the case in hand, from the perusal of the file, I find that the complainant has vaguely stated in the complaint that the loan was advanced to the accused in April 2012 for three months, however in his cross-examination the appellant-complainant stated that he does not know the exact date as to when he handed over the amount of Rs. 4,00,000/- to the respondent-accused. No receipt or security document was got executed while lending such a huge amount of Rs. 4,00,000/- to the respondent-accused. Although it has come in the evidence of the appellant-complainant that the amount was given to the respondent-accused in the presence of his father, however the appellant-complainant has not examined his father in support of his case. Otherwise also, the appellant-complainant did not explain as to from where he had brought such a huge amount of Rs. 4,00,000/- to lend it to respondent-accused. The appellant-complainant has admitted in his cross-examination that he is an Income Tax Payee; however no income tax returns were placed on the record to show that the transaction in question was reflected in the Income Tax Return. There is no document on record to show the loan transaction. All these facts are fatal to the case of the complainant as per the law laid down by the Hon'ble Supreme Court in ***Vijay v. Laxman and another, 2013(1) RCR (Criminal) 1028***.

Along with this appeal, an application bearing ***CRM-29894-2017*** has been filed by the appellant for placing on record the account statement and Income Tax Returns of the appellant as Annexures A-1 to A-3, as additional evidence.

However, the said documents (Annexures A-1 to A-3) also do not advance the cause of the appellant inasmuch as, from the account statement of appellant-Ajay Singh, pertaining to State Bank of India, Subhash Colony, G.T. Road, Panipat, it is seen that as on 27.03.2012, there was only Rs.2,32,000/- in the said account. The loan is alleged to be given to respondent-accused in April 2012, although no specific date is forthcoming, however, on 19.04.2012, a cash amount of Rs.39,000/- was deposited and on same day i.e. 19.04.2012, a cash amount of Rs.2,50,000/- is shown to have withdrawn from the account by himself. There is another entry on 28.04.2012, wherein, a cash amount of Rs.1,34,500/- has been deposited in the same account and on 30.04.2012, another sum of Rs.25,000/- appears to have been withdrawn through the ATM and the balance amount as on 30.04.2012 is Rs.1,10,000/-.

Apart from the above, the appellant has placed on record the Photostat copies of Income Tax Return Verification Form (ITR-V) for the assessment year 2010-11, wherein, the gross total income of the appellant-Ajay Singh, is shown as Rs.1,51,500/-. Similarly, the Income Tax Return Verification Form (ITR-V) for the assessment year 2011-12 shows that the gross total income of the appellant was Rs.1,58,500/-. There is no computation sheet attached with these returns nor any other document has been attached, which would suggest that the alleged transaction of loan was reflected in the said documents.

The Hon'ble Supreme Court in ***Ashok Tshering Bhutia vs State of Sikkim 2011(2) RCR (Criminal) 99***, has held that the additional evidence at appellate stage is permissible, in case of failure of justice. However, such power must be exercised sparingly and only in exceptional suitable cases where the Court is satisfied that directing additional evidence would serve the interests of justice.

In my considered view, the aforesaid documents (Annexures A-1 to A-3) which the appellant seeks to be led in additional evidence, does not serve the interest of justice. Moreover, the aforesaid documents were well within the knowledge of the appellant and he had a fair opportunity to produce them at the stage of its evidence; however, he did not avail of the said opportunity. Accordingly, the application for leading additional evidence is dismissed.

Apart from the above, there are material contradictions in the testimony of the appellant-complainant. In the complaint, it is the stand of the appellant-complainant that the cheque in question was issued by the respondent-accused after three months, however in the cross-examination the appellant-complainant stated that the cheque in question was handed over to him by the respondent-accused at the time of grant of money.

It is settled law that presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In the present case, the respondent-accused has raised defence which is duly supported and corroborated by the defence evidence.

The learned trial Court, after appreciating the evidence on record, observed as under:-

> *21. After hearing the arguments as put forth by learned Counsel for the parties and have perused the record very carefully and meticulously, the findings of this Court are as under:-*
>
> *22. In case titled as Rangappa Vs. Sri Mohan 2010 (11) SCC 441, Hon'ble Supreme Court has laid down that presumption mandated under Section 139 of the N.I.Act includes a presumption that there exists a legally enforceable debt or liability and that is a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. As regards the standard of proof for rebutting the said presumption, it was held that the standard of proof so as to prove a defence on the part of an accused, is preponderance of probabilities and interference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties, but also by reference to the circumstances, upon which the accused relies.*
>
> *23. The complainant in his cross-examination has deposed that in the year 2011-12 he had Cable network*

business and his annual income from the said business was around Rs. 40,000/- per annum. He has further deposed that he did not had any other income from any other source. However, the complainant has not placed on record any documentary proof which proves that he had a business. Even if the version of the complainant is believed, then also it is really unexplained by the complainant as to from where he had brought such an huge amount of Rs. 4,00,000/- to lend it to the accused. The complainant in his cross-examination has also stated that he does not know the exact date as to when he had handed over the amount of Rs. 4,00,000/- to the accused. In the considered opinion of this court an amount of Rs. 4,00,000/- is not a small amount and any person giving such a heavy amount to someone shall remember the exact date and time as to when the said amount was handed over to the accused. The complainant has further deposed that he is filing Income Tax Return for the last 8-9 years. However, no any Income Tax Return of the complainant has been placed on record in evidence. The Hon'ble Delhi High Court in case titled as "Devender Kumar vs. Khem Chand 2016(1) RCR (Criminal) 227" has held that where the complainant has not shown the loan amount in his ITR- An adverse inference could be drawn against the petitioner. In the absence of any documentary proof, the annual income of the complainant cannot be presumed as around Rs. 14 to 15 lacs. The complainant in order to prove his financial capacity has also placed on record his bank account statement as Mark-CW1/A. The perusal of the statement Mark-CW1/A goes to reveal that the complainant never had such an heavy amount in his account so as to lend it to someone. It is really unbelievable that the complainant handed over such a heavy amount to the accused without any documentation or any receipt in this regard.

24. The complainant has further deposed that he has given Rs. 4,00,000/- to the accused in the presence of his father. In such circumstances, it was necessary for the complainant to examine his father in the witness box. However, the complainant has failed to do so. The perusal of the complaint as well as the affidavit of the complainant Ex.CW1/A goes to reveal that the complainant has alleged that the cheque in question was issued by the accused after three months, however, the complainant in his cross-examination has stated that the cheque in question was handed over to him by the accused at the time of the grant of money. The complainant has himself stated in his cross-examination that the complainant had issued an advanced post dated cheque. There are material contradictions in the testimony of the complainant and in such circumstances the testimony of the complainant cannot be relied upon.

25. The Hon'ble Supreme Court of India in John. K. Abraham Vs. Simon C. Abraham and another 2014(1) SCC (Criminal)791 and K. Prakashan Vs. P.K. Surenderan 2007(3) CCJ 410 (SC) has held that in order to draw the presumption under Section 118 read with Section 139, burden lies on the complainant to show: (i) that he had the requisite funds for advancing the sum of money/loan in question to accused, (ii) that the issuance of cheque by accused in support of repayment of money advanced was true and (iii) that the accused was bound to make payment as had been agreed while issuing cheque in favour of complainant. The Hon'ble Punjab & Haryana High Court in Manjit Singh Vs. KantaVerma 2015(2) RCR (Criminal) 606 (P&H) has observed while acquitting the accused in a complaint under Section 138 of N.I. Act, that since the complainant could not satisfactorily explain the source of funds out of which the alleged loan to the tune of Rs.3 lacs was granted to the accused, the complaint was liable to be dismissed.

26. The accused has taken a defence that he used to give blank cheques to his Clerk for withdrawing money from his bank accounts, but on dated 15.06.2006 his Clerk was on leave. The father of the complainant, being the friend of accused, was present in his Chamber and he offered to withdraw the money for the accused from the bank. The accused gave a blank cheque with his signatures to the father of complainant and also made two signatures on the back side of the said cheque. But the father of complainant had kept the cheque with him with an ulterior motive to misuse the cheque and now the complainant has misused the cheque in question. The accused in order to make his defence probable has placed on record the attested copies of the cheques handed over by him to his Clerk for withdrawing money from his bank accounts. The cheques have been placed on record as Ex.D3 to Ex.D43 and Ex.D51 to Ex.D62. The perusal of the said cheques goes to reveal that the Clerk of the accused had withdrawn money from the bank accounts of the accused on various occasions. The perusal of the cheques Ex.D3 to Ex.D43 further goes to reveal that the cheques bears two specimen signatures of the accused on the back side. Similarly, the accused has also placed on record the attested copies of the cheques pertaining to his another account as Ex.D51 to Ex.D62. It is also pertinent to mention here that DW2 Ajay Deswal, SWO, State Bank of Patiala has categorically deposed that the Clerk of the accused had deposited and had withdrawn money from the bank account of the accused vide cheques Ex.D3 to Ex.D43. Similarly DW3 Harjeet Singh, Deputy Manager, SBI, Panipat has also deposed that the Clerk of the accused namely Anil Dhiman had deposited and withdrawn money from the bank account of the accused vide cheques Ex.D44 to Ex.D62. The perusal of the cheque Ex.C1 further goes to reveal that the accused had *also made two specific signatures on the back side of the cheque.*

27. Keeping in view the overall circumstances and the evidence present on the case file, the defence of the accused becomes probable that the cheque in question is being misused by the complainant.

28. The Hon'ble Punjab & Haryana High Court in case titled "M/s Mahindra Hire Purchase (Regd) through its Managing Partner Vs. Aswani Dada 2016(2) RCR (Civil) 331" has held that whenever two views are possible, view which goes in favour of acquittal is to be followed by the courts.

29. In view of the above discussion, in the considered opinion of this Court, the defence taken by the accused seems to be reasonably probable. Section 138 of N.I. Act is attracted only on account of dishonour of Cheque issued in discharge of liability or debt. Accordingly, present complaint is hereby dismissed. Accused is hereby acquitted of the notice of accusation served upon him. His bail bonds and surety bonds stand discharged…"

The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law.

Considering the totality of circumstances, I find that the learned Court below has given the findings by correctly appreciating the evidence in right perspective and accused-respondent has been rightly acquitted. In no way, the impugned judgment can be held as perverse or against the evidence. The appellant-complainant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 14.07.2017 passed by learned Judicial Magistrate Ist Class, Panipat.

No other argument was raised

In view of the above discussion, the instant appeal is bereft of any merit and the same is accordingly dismissed. The judgment dated 14.07.2017 passed by learned Judicial Magistrate Ist Class, Panipat is upheld.

All pending application/s, if any, shall stand closed.

December 21, 2022 **(HARSH BUNGER)**
gurpreet **JUDGE**

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