IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-MA-1037 of 2018
Date of Decision: 14th July, 2022

Punjab Pulp Industries Ubhawal Road, village Badrukhan, Sangrur
... Applicant

Versus

M/s Kalison Overseas 366, Industrial Area, Ludhiana & another

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. M. K. Singla, Advocate for the applicant.

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AVNEESH JHINGAN , J.(Oral)

This is an application for grant of leave to appeal against judgment of acquittal dated 12.4.2018 passed in Complaint No. 3757 of 12.6.2015 under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

As per the case set up, the applicant was dealing in the business of Preform and Pet bottles. The respondents purchased goods on different dates and made part payments. For discharge of the liability, cheque bearing No. 013365 dated 7.1.2015 for the sum of Rs.91,635/- drawn on Catholic Syrian Bank, Branch Preet Nagar Green Field, Ludhiana was issued. On presentation, the cheque was returned on 6.4.2015 with the remarks “insufficient funds”. After serving legal notice complaint was filed.

To prove the allegations, the applicant tendered cheque in question, return memo, legal notice, postal receipt, copies of invoice, billity and statement of ledger account.

The respondents took defence that the payments of Rs.87,492/-

and Rs.1,00,000/- were deposited in account of complainant through RTGS/NEFT on 25.12.2014 and 12.1.2015 respectively. There was no legal liability outstanding on the date of presentation of cheque. The cheque of security given to secure the consideration of the transaction was mis-used.

The respondents relied upon the ledger account produced, to show that payments against Ref. No. 102 were made through RTGS. On failure of the complainant to adduce evidence that an amount was outstanding, the respondents were acquitted.

Learned counsel for the applicant submits that the invoice in question was of Rs.91,635/-, the cheque was of the same amount, it raises a presumption that the cheque was issued for clearing the payment of this very invoice. He relies upon the entry in Ex. C9 to submit that the payment of Rs.91,635/- was actually made on 12.1.2015 . He further submits that in the reply to the legal notice, the liability was admitted.

There is no dispute on proposition that presumptions under Sections 118 and 139 of the Act are rebuttable and the onus on the accused under the Act is not as strict as is on the prosecution. On rebutting the presumptions, the onus shifts on the applicant.

The Supreme Court in **Vijay v. Laxman and another, 2013 (2) JT 562** held as under:

> *"We are not unmindful of the fact that there is a presumption that the issue of a cheque is for consideration. Sections 138 and 139 of the Negotiable Instruments Act make that abundantly clear. That presumption is, however, rebuttable in nature. What is most important is that the standard of proof required for rebutting any such presumption is not as high as that required of the prosecution. So long as the accused can*

required for rebutting any such presumption is not as high as that required of the prosecution. So long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged. Whether or not it is so in a given case depends upon the facts and circumstances of that case. It is trite that the courts can take into consideration the circumstances appearing in the evidence to determine whether the presumption should be held to be sufficiently rebutted. The legal position regarding the standard of proof required for rebutting a presumption is fairly well settled by a long line of decisions of this Court".

The applicant failed to discharge the onus that on the day of presentation of the cheque, any debt or other liability was due or that *inspite* of RTGS payments received, still the amount for the invoice in question was due or that the payment received through RTGS was for some other transaction.

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. The conclusion arrived at by the trial court is plausible reason.

The application is dismissed.

(AVNEESH JHINGAN)
JUDGE

14th July, 2022
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Whether reasoned/speaking Yes
Whether reportable No