IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRM-A-1257-MA-2018(O&M)

Date of Decision:-18.04.2022

Avtar Singh.

......Appellant.

Versus

Tej Bhan Singh.

......Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. J.S. Jaidka, Advocate for the Applicant/appellant.

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JASJIT SINGH BEDI, J. (ORAL)

The applicant/appellant has filed the present application for leave to appeal against the order of acquittal dated 16.03.2018 passed by Judicial Magistrate, Ist Class, Ludhiana whereby the complaint under Section 138 of the Negotiable Instruments Act, 1881 filed by the applicant/appellant was dismissed.

2. The brief facts of the case are that the accused/respondent was known to the complainant/appellant. So in view of friendly relations between them, the accused had taken a friendly cash loan of Rs.1,80,000/- from the complainant for personal use with the assurance to repay the same with a short period. But despite his promise and on the demand of the complainant, the accused failed to repay the above said loan amount to him. Ultimately, in order to discharge his legal liability, the accused issued a cheque bearing no.469108 dated 23.02.2015 for Rs.1,80,000/- in favour of the complainant. The complainant presented the said cheque in the bank for encashment, but the cheque was dishonoured by the bankers of the accused vide memo dated 26.02.2015 with the remarks “Insufficient Funds” and “Drawer Signature Differ”. As the cheque had been dishonoured a notice was served upon the accused in terms of the mandate of Section 138 of the Negotiable Instruments Act, 1881 to make the payment within the stipulated time. However, the said payment was not made on receipt of the notice leading to the filing of the complaint and consequential summoning order dated 21.05.2015. On the appearance of the accused he was granted bail. Notice of accusation under Section 138 of the Negotiable Instruments Act was duly served upon the accused to which accused pleaded not guilty and claimed trial.

3. In order to prove his case, complainant stepped into the witness box as CW-1 and thereafter closed his after notice evidence. To prove his case against the accused, the complainant stepped into the witness box as CW-1 and proved on record Ex.C-1 copy of cheque, Ex.C-2 cheque returning memo, Ex.C-3 copy of legal notice, Ex.C-4 and Ex.C-5 original postal receipt and Ex.C-6 reply to the legal notice.

4. The statement of the accused under Section 313 Cr.PC was recorded in which all the incriminating evidence available in the statement of witnesses of the complainant was put to the accused who denied the same and pleaded his innocence. To rebut the aforesaid evidence of the complainant, accused examined DW-1 Pritam Singh who deposed in favour of the accused. Learned Counsel for the accused also tendered document Ex.D-3 i.e. original writing. No other witness were examined by the accused in his defence evidence.

5. The counsel for the complainant had argued that the accused had admitted his signatures on the cheque in question and, therefore, it could be presumed that the cheque was issued for the discharge of some legally enforceable debt or liability, though the said presumption was rebuttable.

6. The counsel for the accused on the other hand had contended that the accused had been falsely implicated in the complaint. The cheque had never been issued in discharge of his legal liability. In fact he took a loan of Rs.60,000/- in the year 2014 of which he had paid Rs.40,000/- to the complainant and only Rs.20,000/- was pending. A compromise had been effected between them vide which Rs.10,000/- was paid to the complainant on 25.04.2014 and the remaining amount was to be paid in January 2015. Hence only Rs.10,000/- remained pending. However, the complainant misused the security cheque in question which was given to him as security of the entire loan amount of Rs.60,000/-. It was thus averred by the counsel for the accused that there was no legal liability of the accused towards the complainant.

7. After examining all the evidence of the complainant as also the accused, the trial Court came to the conclusion that the accused had admitted in his cross examination that the cheque in question had been given to him as a security cheque in the month of January/February 2015. This fact had been corroborated by DW-1 Pritam Singh. The Court also came to the conclusion that once there was existing dispute of repayment of the loan of Rs.60,000/- then there was no question of the complainant advancing another huge loan amount of Rs.1,80,000/- to the accused without execution of any written document. Moreso, when with respect to the meagre amount of Rs.10,000/- there was an agreement Ex.D-2 and D-3 but not in the case of a much heavier alleged advancement of loan of Rs.1,80,000/-.

8. Thus, the court came to the conclusion that the presumption had been rebutted by the accused raising probable defence. It was held that the standard of proof was preponderance of probabilities and that the requirement of rebutting any presumption on the part of the defence is not as high as required by the prosecution. Therefore, the court came to the conclusion that there was nothing on record to prove that the cheque in question was issued by the accused in favour of the complainant in discharge of his legally enforceable debt vide impugned judgment dated 16.03.2018.

9. The Counsel for the appellant/complainant has argued that the complainant had duly proved that the cheque had been issued for the discharge of legally enforceable debt and the defence of the accused was not sufficient to rebut the presumption as has been found by the trial Court. He further argued that the finding of the trial Court that such a huge amount of Rs.1,80,000/- could not have been advanced to the accused was contrary to the record.

10. I have heard learned Counsel for the appellant at length.

11. As has been pointed out by the learned trial Court while acquitting the accused, the complainant in his cross examination has admitted that the cheque in question was a security cheque. DW-1 Pritam Singh has categorically deposed that the accused was not liable for repayment of the cheque amount as he had taken a loan of Rs.60,000/- from the accused out of which only Rs.10,000/- remains to be paid. In fact the cheque given for the security for the loan of Rs.60,000/- has been misused. It may also be reiterated here that once there was a dispute of repayment of loan of Rs.60,000/- it was highly unlikely that the complainant would advance another loan of Rs.1,80,000/- to the accused without the execution of the written document.

12. Even otherwise, it has been settled by the Hon'ble Supreme Court in **M.S. Narayana Menon @ Mani Vs. State of Kerala & Anr. 2006(3) RCR (Criminal) 504** that for rebutting a presumption under Section 138 of Negotiable Instruments Act what is needed is the raising of a probable defence and for that purpose evidence adduced on behalf of the complainant could also be relied upon. Standard of proof evidently is preponderance of probabilities in the case of the defence. In the present case, the version of the accused seems to be more reasonable and probable and therefore, the burden of rebutting the presumption would stand discharged. In fact there is nothing on record to prove that the cheque in question was issued by the accused in favour of the complainant in discharge of any legally enforceable debt.

13. In view of the above, there is no merit in the application for leave to appeal preferred by the applicant/appellant (complainant) and the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

April 18, 2022
Vinay

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