HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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225 **CRM-A-1725-MA-2018**

Date of Decision: 12.10.2022

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Shyam Babu Rawat ... Applicant

VS.

Manish ... Respondent

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Arjun Rai, Advocate for
Mr. Kunal Dawar, Advocate for the applicant

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Sandeep Moudgil, J. (Oral)

This application for leave to appeal has been filed by applicant-complainant against acquittal of the respondent, vide judgment and order dated 21.04.2018 passed by the learned JMIC, Faridabad (for short, 'the trial court') whereby the complaint under Section 138 of the Negotiable Instruments Act (in short, the NI Act) has been dismissed.

Due the friendly circle, respondent approached the applicant/ complainant for lending an amount of Rs. 5,00,000/- in January, 2016. It is alleged that at the time of taking said amount from the applicant/ complainant, respondent assured to repay the same within six months. It is further alleged that when applicant/complainant demanded his money, then the respondent after admitting his liability, issued a cheque dated 08.08.2016 for Rs.5,00,000/- drawn on Indian Overseas Bank, Faridabad in favour of the applicant/complainant. When applicant/complainant presented the said cheque with his banker, the same was return as unpaid vide return memo dated 11.08.2016 with the remarks "Funds Insufficient". The applicant/ complainant got issued legal notice dated 08.09.2016 through his counsel to make the payment, but no payment has been made. Hence, a complaint was filed under Section 138 of the NI Act but the same has been dismissed by learned trial court vide judgment dated 21.04.2018 on the ground that the applicant/complainant has miserably failed to prove that the cheque was issued by the respondent in discharge of his legal debt and liability.

Learned counsel for the applicant contends that from the evidence brought on record, applicant has been able to prove the guilt of the respondent and all the ingredients of Section 138 of NI Act have been duly complied with. He argued that as there were friendly relations between both the parties, therefore, an amount of Rs.5,00,000/- was advanced by applicant/complainant to respondent as friendly loan and in order to discharge his liability qua the loan taken, the cheque, in question, was issued by the respondent, however, the same was dishonoured. He argued that the defence taken on behalf of respondent that the cheque was issued by him as security cheque in a committee run by the applicant/complainant being a member and he has paid all the amount to the applicant/complainant, is totally vague and baseless defence. No evidence has been brought on record to substantiate the same. On the other side, applicant/complainant by leading cogent and convincing evidence has been able to prove its case successfully. Rules of presumption lies in favour of applicant/complainant. Respondent miserably failed to rebut the presumption drawn in favour of applicant/complainant.

I have heard learned counsel for the applicant and gone through the record and this Court is of the considered view that there is no fault in the judgment passed by the learned trial court.

Learned trial court rightly observed that the applicant/complainant has failed to produce any document/affidavit/pronote or any writing to establish that a huge amount of Rs. 5,00,000/- has been advanced by him to the respondent and as such it is highly improbable that any person can give such a huge amount as friendly loan without any writing or executing any document. The applicant/complainant has totally collapsed during his cross-examination and totally deviated from the lines of his complaint. The applicant/complainant has not shown this loan in his I.T.R.

Learned trial court has returned a finding that the respondent has failed to show his capacity to pay such a huge amount to the respondent which is directly against the law laid down in **K. Prakasham Vs. P.K. Surederan 2007(4) RCR Crl. 543** wherein the Hon'ble Supreme Court has held that where the complainant has failed to show that he had financial capacity to advance huge amount, the complaint is liable to be quashed. It has further come on record that there is major contradiction in the applicant/complainant's version at the time of appearing as CW1 and at the time of filing the complaint inasmuch as the applicant/complainant has not mentioned any date of advancing the loan to the respondent but in his evidence he stated dates of giving money. Further, in his complaint he has written that respondent and the applicant/complainant are “CLOSE FRIENDS” but in his evidence he stated that respondent is “NOT HIS FRIEND” and calls him Mama.

Further, learned trial court hs rightly relied upon **Sekhon and Sekhon Finance Ltd. (M/s) vs. Rani 2014(1) NIJ 296**, to hold that mere admission of signature is no admission where the respondent contends misuse of the blank signed cheque and onus to prove that there in fact existed a legally enforceable debt, was upon applicant/complainant firm and none else.

The learned trial court rightly observed that presumption under Section 138 & 139 of the NI Act are rebuttable presumption and same are rebuttable on preponderance of probabilities and once the defence is able to rebut the presumption under the Negotiable Instruments Act, it is for the applicant/complainant to prove the case beyond all reasonable doubts. The responsibility of the defence is over by creating a reasonable doubt in the prosecution case and the defence is not required to prove its case beyond all reasonable doubts. However, the prosecution has failed to prove its case beyond all reasonable doubts and therefore, the respondent becomes entitled to the benefit of doubt and to be acquitted of the accusation.

In view of the above discussion, this Court does not find any illegality in the judgment passed by the learned trial court.

Accordingly, the application for leave to appeal is hereby dismissed.

12.10.2022
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*