

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1763-MA-2016 (O&M)

Date of decision : 20.12.2022

Ashok Kumar Bansal

..... Applicant

versus

Devki Nandan

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. A.S. Ahluwalia, Advocate
for the applicant.

Mr. Jasdeep Singh Kolley, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

This is an application filed under Section 328(4) Cr.P.C. seeking leave to appeal against the judgment dated 29.07.2016 passed by JMIC, Dera Bassi whereby complaint preferred by the applicant stands dismissed and the respondent has been acquitted of the allegations under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'N.I. Act'.)

2. The case of the applicant was based upon cheque No.497073 dated 18.08.2015, amounting to Rs.10,85,000/- drawn on Indusind Bank. The same, on presentation, was dishonoured with the remarks 'Account Closed'. As per the pleaded case, the complainant claimed that he advanced a friendly loan of Rs.6,40,000/- to the respondent vide writing dated 07.03.2014 which has been proved on record as Ex.C-1 and thereafter again on 18.07.2015 further sum of Rs.1,50,000/-. In order to repay the aforesaid amounts of Rs.6,40,000/-, Rs.1,50,000/- and interest @ 2% per month, respondent issued a cheque of Rs.10,85,000/- in

discharge of his legally enforceable liability.

3. After trial, the Court below after analysing the evidence threadbare came to the conclusion that the complainant has failed to prove his case as Ex.C-1 does not advance the cause of the complainant and the complainant has failed to show as to how and from where the amount of Rs.10,85,000/- has been calculated.

4. Counsel for the applicant while assailing the finding recorded by the trial Court submits that the trial Court erred in law in dismissing the complaint for want of proof of source of the funds and submits that in view of presumption in favour of the complainant under Section 139 of the N.I. Act, the onus lay heavily upon the accused to rebut the case of the complainant. Further he submits that the complainant has placed on record overwhelming evidence vide separate application filed under Section 391 Cr.P.C., on which respondent was put to notice vide order dated 13.11.2016. He submits that in case the aforesaid evidence is considered, the case of the complainant stands fully proved and the respondent is guilty of having committed offence under Section 138 of N.I. Act.

5. Counsel for the applicant has relied upon judgment rendered by the Apex Court in the case of ***Rajeshwar Prasad Misra vs. State of W.B. (SC)***, reported as ***1965 AIR (SC) 1887*** and judgment rendered by this High Court in ***Tosiba Industries Ltd. vs. State of Haryana*** reported as ***RCR (Criminal) 683*** to submit that the Appellate Court has a power to take additional evidence if it considers necessary and that where the evidence produced is necessary, the Court should allow the same to come on record.

6. There is no dispute w.r.t. the aforesaid proposition of law. However, exercise of power by the Appellate Court under Section 392 is for taking additional evidence is subject to the rider if the Court considers it necessary for the adjudication of the case. In the considered opinion of this Court, the evidence brought on record by the applicant by way of present application will have no bearing on the case.

7. Per contra, counsel for the respondent submits that as per settled law, presumption under Section 139 of the N.I. Act is well rebuttable. In the present case, no fault can be found with the well reasoned judgment passed by JMIC, Dera Bassi. Even if the evidence placed on record is taken into consideration, the same cannot have an effect of curing inherent contradiction and infirmities in the case of the complainant which have been pointed out by the Court below to dismiss the complaint.

8. I have heard counsel for the parties and have gone through the records of the case.

9. Before advertng to the facts of the present case, it needs to be noticed that it is trite law as laid down in ***Rangappa Vs. Sri Mohan, (2010) 11 SCC 441*** that though presumption under Section 139 of the N.I. Act comes into play the moment accused admits the signatures on the cheque leaf, yet the said presumption is rebuttable. In order to rebut the same, respondent-accused is required to prove the probable defence and in order to prove the same, he can well rely upon the contradictions in the case of the complainant.

10. In the present case, trial Court found that writing dated 07.03.2014 Ex.C-1 though proved, yet demolishes the case of the complainant himself, as the same does not have an effect to explain as to

how the amount of Rs.10,85,000/- has been arrived at after taking into consideration simple interest which was payable @ 2% per annum. Apart from that, the trial Court is right in holding that the contractions in the case of the complainant lead to the conclusion that the allegations levelled in the complaint do not inspire confidence. The complainant having miserably failed to prove accounts qua transaction entered between the parties and lead credence to the probable defence raised by the accused, the respondent cannot be held guilty of offence committed under Section 138 of the N.I. Act.

11. Further the accused is not required to lead evidence to rebut the presumption, but can definitely call upon the evidence lead by the complainant. Moreover, the scope of the appeal also stands culled out by the Apex Court in ***Chandrappa and ors. V. State of Karnataka, 2007 (2) RCR (Criminal) 92*** wherein it was held that :-

“(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed

to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

12. As a sequel of discussion held hereinabove, no ground is found to interference in the well reasoned judgment rendered by the trial Court. Consequently, the same is dismissed.

13. Since the main case has been decided, pending miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

20.12.2022

Dinesh

Whether speaking/reasoned

Yes

Whether Reportable :

No