**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : 22.09.2022

1. CRM-A-1770-MA-2014

Yashwant Singh ..... Applicant

versus

Manoj Kumar Wadhwa ...... Respondent

2. CRM-A-1745-MA-2014

Ravinder Singh Lather ..... Applicant

versus

Manoj Kumar Wadhwa and another ...... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

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Present :-Mr. Virender Kumar, Advocate
for the applicant(s).

Mr. T.P. Singh, Advocate
for the respondent(s).

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PANKAJ JAIN, J. (ORAL)

By way of these applications, the applicant(s) seek leave to file appeals against the said judgment dated 19.08.2014 passed by JMIC, Karnal, whereby complaint filed by him under Section 138 of the Negotiable Instruments Act (for short 'Act') against the respondents stands dismissed.

2. Trial Court while dismissing the complaint held as under:-

> "xx xx xx
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> 17. Surprisingly and to the utmost surprise of the court, it has nowhere been mentioned in the compromise Ex.C9 that the cheque amount was to be paid by the accused to the complainant as *interest* accrued on the principal amount rather it appears that the said amount was the payment towards the sale consideration of the showroom situated at Meerut Road, Karnal. Meaning thereby, the contents of compromise Ex.C9 did not support the contents of complaint and inturn version of the complainant. Except this compromise, there is not an iota of evidence on the case file from where the court could gather that the cheque in question was issued as the payment of *interest* accrued on the principal amount. Consequently, it has to be held that the compromise Ex.C9 instead of supporting the version of complainant had lent reasonable support to the version of the accused.
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> Hence, the court is inclined to held that the accused was not required to pay any interest on the principal amount invested by the complainant & others, as alleged by the complainant. The cheque was issued as a security of the sale consideration of a showroom situated at Meerut Road, Karnal. The accused did not pay the said amount to the complainant, as such, the liability of the complainant to get the sale deed of said showroom executed & registered in favour of the accused stood discharged. Consequently, the cheque in question was merely a security cheque and not issued in discharge of a

> legally enforceable debt/liability.
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> 18. In view of the aforesaid discussion and findings, the court is of the view that the accused has successfully raised a probable defence and accordingly the presumptions under Section 118 & 139 of the Negotiable Instrument Act has been rebutted. On the other hand, complainant has failed to proved his case that the accused has issued the cheque in question in discharge of his legally enforceable debt/liability Accordingly, the accused is hereby **acquitted and exonerated** of the notice of accusation u/s 138 of Negotiable Instrument Act."

3. Counsel for the applicant submits that the trial Court erred in holding that the cheque in question was a security cheque. He further submits that once signature on cheque stands admitted by the accused, trial Court ought to have raised presumption under Section 118 of the Act to hold respondents guilty. Reliance in this regard is being placed upon ***2019 (4) RCR (Criminal) 657*** titled as ***'Manmohan Singh vs. Daljit Singh Chadha'***. He further relies upon ***'M/s Womb Laboratories Pvt. Ltd. vs. Vijay Ahuja and another'*** reported as ***2019 (4) RCR (Criminal) 358***, wherein Apex Court held that handing over of security cheques *per se* would not extricate accused from discharge of liability arising out of said cheques. He further submits that the initial burden was discharged by the complainant and it was for the accused to lead defence evidence to rebut the same and in order to impress upon his argument, he relies upon the judgment of Apex Court in ***2019 (3) RCR (Criminal) 863, titled as 'Pavan Diliprao Dike vs. Vishal***

Narendrabhai Parmar', wherein judgment passed by the High Court reversing the acquittal while relying upon statutory presumption under Section 118 of the Act was upheld by the Supreme Court. He further relies upon ***2012 (2) Criminal Court Cases 837*** titled as ***'A. Brahmananda Reddy vs. State of A.P. & and another'*** to submit that the answers given by the accused in his statement under Section 313 Cr.P.C. does not amount to rebuttal unless accused denies consideration and denies existence of debt or liability by examining himself as a witness during trial.

4. Per contra, counsel for the respondents submits that it is a complainant himself who has tendered into evidence Ex.C-9 which shows that the cheque in question was handed over to the complainant in contingency of him getting sale deed of the showroom executed in favour of the applicant. He thus submits that admittedly, such sale deed was never executed and therefore, the cheque cannot be said to have been drawn in favour of the complainant in discharge of legally enforceable debt/liability.

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

6. So far as the facts of the present case are concerned, there is no serious dispute. Admittedly C-9 was exhibited by complainant himself. As per the terms thereof, cheque in question was handed over by the accused to the complainant. It also stands agreed in one of the covenants contained in the said agreement that the complainant i.e. the

first party shall get the sale deed of a showroom stated to be situated at Meerut Road, Karnal in favour of second party i.e. the accused in view of the said cheque.

7. In view of the aforesaid facts, no fault can be found with the finding recorded by the trial Court. Needless to observe herein that statutory presumption as contained in Sections 118 and 139 of the Act like any other presumption under law are rebuttal. Accused can well rely upon evidence adduced by the complainant to rebut the said presumption. Trite it is that the prosecution is required to prove the case beyond benefit of doubt whereas accused has to raise defence based on preponderance of probabilities. Reference can be made to ratio of law laid down in ***Rangappa v. Mohan, (2010) 11 SCC 441.***

8. In the case of ***'Gurdev Singh vs. M/s. Punjab Agricultural Traders',*** decided on 10.03.2011, it has been held as under:-

> "xx xx xx
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> 4. It is a case where most of the facts were admitted by the accused in his statement recorded under section 313 Cr.PC. He admitted the issuance of cheque, dishonouring thereof on account of insufficient of amount in his account and giving assurance to the complainant for presenting second time on the plea that there would be sufficient funds available in his account for the honouring of cheque. He also stated in the statement that he had given the amount of cheque. Thereafter he appeared in the witness box as DW 1, after obtaining permission of the learned trial court. At that time he took a somersault. He came with the

statement that the amount was borrowed by his father in the year 1996 and it was his father who had paid a sum of Rs. 50,000/- to the complainant in the year 1997. During his cross-examination he admitted in so many words that he himself and the complainant are dealing in pesticides though he denied the fact that he had purchased the pesticides from him and cheque in question was issued in lieu of the price thereof.

5. From the evidence produced by the complainant it stands proved that cheque Ex. C-1 was issued by the accused. It was categorically stated by Inder Singh complainant CW 3 that the accused purchased pesticides from him and in discharge of that liability issued the cheque. In support of that oral statement the complainant has also proved on record the copy of the account book Ex. C-7, which is the account of the accused being maintained by the complainant. As per that account book he purchased goods worth Rs. 92,600/- from 21.05.1996 to 21.06.1996. In these circumstances presumption can well be drawn under Section 139 of the Act that this cheque was issued in discharge of legally enforceable debt. It has recently been held by Apex Court in ***Rangappa v. Mohan, 2010(3) RCR (Criminal) 164*** that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability."

9. In the present case C-9 is fatal to the case projected by the complainant. Bare reading thereof makes it explicitly clear that the encashment of the cheque was to abide by a contingency i.e. the execution of sale deed. Admittedly, sale deed could not be executed and

thus it clouds the story of the complainant that the cheque in question was issued in discharge of legally recoverable debts/liability.

10. Consequently, the present applications are dismissed.

(PANKAJ JAIN)
JUDGE

22.09.2022
Dinesh

Whether speaking/reasoned Yes

Whether Reportable : No