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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-879-MA-2017 (O&M)
Date of Decision: 02.12.2022

VIKRAMJIT SINGH ….Applicant

Versus

PAWAN KUMAR MALHOTRA …Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Avtar Singh Khinda, Advocate
for the applicant.

HARSH BUNGER, J. (Oral)

The present application has been filed under Section 378(4) Cr.P.C. for grant of Special Leave to Appeal against the judgment dated 30.01.2017 passed by Additional Chief Judicial Magistrate, Kapurthala, vide which the complaint under Section 138 of the Negotiable Instruments Act, 1881 has been dismissed and the respondent-accused has been acquitted against the notice of acquisition served upon him.

As per the allegations in the present case, respondent-accused Pawan Kumar Malhotra borrowed a sum of Rs.5,85,000/- from the applicant-complainant with a promise to return the same whenever he will demand for the same, but the respondent-accused did not return the borrowed amount. He averred that he approached respondent-accused number of times and ultimately in order to discharge his legal liability, respondent-accused issued a cheque bearing No.011491 dated 12.03.2010 drawn over HDFC Bank Limited, 202 Model Town, Jalandhar. However, vide memo dated 13.03.2010, the said cheque when presented for enchashment got dishonoured with the remarks "Account Closed". Thereafter, the applicant through his counsel served a legal notice dated 22.03.2010, calling upon him to make the payment of the said cheque within 15 days of the receipt of the notice, however of no avail, accordingly the complaint was filed under Section 138 of the Negotiable Instruments Act, 1881. In support of his version, the applicant/complainant examined one Radhe Sham Sharma, Clerk Canara Bank, The Mall Road, Kapurthala, as CW1, Ashu Gupta, Manager, HDFC Bank, Branch The Mall, Kapurthala, as CW2 and the applicant/complainant-Vikramjit Singh himself stepped into the witness box as CW3 and closed his evidence.

The stand of the respondent-accused before the learned trial Court was that he is innocent and has been falsely implicated in this case. He has stated that he had taken a loan of Rs.20,000/- from the applicant/complainant and at the time of taking the loan, he gave a blank undated signed cheque as a security. He had also stated that he had already paid the loan of Rs.20,000/- to the applicant/complainant. At the time of repayment of the loan, he demanded the cheque in question from the applicant/complainant, however, he was told that the said cheque has been lost and the applicant/complainant undertook to return the same as and when the same would be traced out and also he would not misuse the same. He has stated that applicant-complainant had also given an affidavit/undertaking to that effect. The respondent-accused in his defence evidence has examined one Kulwant Singh, Stamp Vendor as DW1 and closed his evidence.

The trial Court formulated the following points for determination, which reads as under:-

"Whether accused Pawan Kumar issued the cheque no.011491

> dated 12.3.2010 for a sum of Rs.5,85,000/- to the complainant, in discharge of his legal liability which on presentation to the bank was dishonoured with the remarks "Account Closed" and despite receiving a legal notice dated 22.03.2010 accused did not pay the cheque amount within the stipulated time without any cause and committed an offence punishable under Section 138 of Negotiable Instruments Act?"

After considering the totality of circumstances and also the evidence available on the record, the learned trial Court dismissed the complaint vide judgment dated 30.01.2017 filed by the applicant/complainant by holding as under:-

> "Thus, in view of my aforesaid discussion, complainant has failed to prove his financial capacity to pay the cheque amount to accused beyond the shadow of doubt and in view of affidavit Ex.D1, accused has already returned the loan amount of Rs.20,000/- to the complainant and the cheque in question given as a security was not returned to accused. So, the complaint is dismissed and accused is acquitted of the charge framed against him. File be consigned to the record room."

Aggrieved by the aforesaid judgment, the present application seeking Special Leave to appeal has been filed.

I have heard learned counsel for the applicant/complainant at length and with his able assistance have also gone through the judgment of the Court below.

Learned counsel for the applicant/complainant has argued that applicant had stepped into the witness box as CW3 and also proved the cheque bearing No.011491 as Ex.C1 along with other documents and the said cheque was issued by respondent-accused in discharge of his legally enforceable debt/liability. It is argued that the presumption under Section 138 of the Negotiable Instruments Act, 1881 is in favour of the applicant/complainant. Suffice it to say that there is no doubt regarding the said legal position regarding presumption, however, the presumption under the statute is a rebuttable presumption and the same was successfully rebutted by the respondent by way of cogent evidence.

In the instant case, the respondent-accused had discharged the initial onus to prove that existence of consideration was improbable. In the statement recorded under Section 313 Cr.P.C, the respondent-accused had specifically stated that the cheque in question had been given as a security for a loan of Rs.20,000/- only and the said loan was already paid back to the applicant-complainant. It is also the categoric stand of the respondent-accused that in respect of the cheque in question bearing No.011491, the applicant/complainant had given an affidavit which is placed on the record as Ex. D1. A photocopy of the said affidavit (Ex. D1) has been handed over in Court today, which is taken on record as Mark "X". A perusal of the said affidavit would show that the applicant/complainant (Vikramjit Singh) has admitted therein that he had taken one blank cheque as security bearing No.011491 of HDFC Bank from Pawan Kumar Malhotra and against the said cheque he had paid an amount of Rs.20,000/-. It is further stated in the affidavit that aforestated cheques had been lost by him and Pawan Kumar Malhotra as already repaid the amount to him and the said cheque was to be returned, however, as the same has been misplaced by him, resultantly the said affidavit was executed. The affidavit further reveals that the applicant/complainant has categorically stated therein that from today onwards nothing is due from Pawan Kumar Malhotra and in case he finds the above said cheque then he shall not misuse the same nor he will present it in the Court. Thus, the onus shifted upon the applicant/complainant.

In my considered view, the learned trial Court has rightly appreciated the said affidavit (Ex. D1) to conclude that the applicant/complainant has failed to prove his financial capacity to pay the cheque amount beyond the shadow of doubt and in view of the affidavit Ex. D1, the respondent-accused has already returned the loan amount of Rs.20,000/- to the applicant/complainant.

In the aforementioned circumstances the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record. It is well-settled that in the cases of acquittal, there is double presumption in favour of the accused; first the presumption of innocence and secondly the accused having been acquitted and the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible. Thus, the applicant/complainant has miserably failed to prove his pleaded case, accordingly, I do not find any ground to grant any Special Leave to Appeal.

The same is accordingly dismissed.

02.12.2022 **(HARSH BUNGER)**
Amandeep **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No