HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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227 **CRM-A-590-2019**

Date of Decision: 12.10.2022

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Anand Choudhary ... Applicant

VS.

Karamjeet Kaur ... Respondent

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Gurbir Singh Sidhu, Advocate for the applicant

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Sandeep Moudgil, J. (Oral)

This application has been filed by the applicant-State under Section 378(4) CrPC for permission to file the accompanying appeal against the judgment dated 04.01.2019 passed by learned JMIC, Barnala whereby the respondent has been acquitted in a complaint under Section 138 of the Negotiable Instruments Act (in short the NI Act).

Briefly as per the complaint, that the respondent had borrowed an amount of Rs.12,50,000/- from the applicant/complainant on 01.10.2015 in cash and executed a pronote and receipt in favour of the applicant/complainant, on the same day and place from the regular deed writer Ramesh Kumar Arora of Barnala which was admitted to be correct and after receiving the consideration amount i.e Rs.12,50,000/- from the applicant/complainant in the presence of witness Kamal Kant son of Vishnu Dev Jha and Ram Kumar Jha son of Jagan Nath residents of Barnala and the same was attested by both witness in presence of the respondent at the same time and the respondent also signed separately on the pronote and receipt. Rate of interest was fixed 2% per annum at the time of execution of pronote and receipt dated 01.10.2015. That after many demands of the applicant/complainant, the respondent in order to repay the borrowed amount issued a cheque no.004511 of dated 05.04.2016 of Rs.14,00,000/- of Allahabad Bank in favour of the applicant/complainant. The aforesaid cheque was presented and the bank returned the cheque unpaid with the remarks of "Funds Insufficient and signature differ". The applicant/complainant served a legal notice upon the respondent on 22.04.2016 and made a demand of cheque amount i.e Rs.14,00,000/- from the respondent who refused to accept the notice and as such was presumed to be served, but the respondent has failed to make the payment of the aforesaid cheque amount. Hence, the applicant/complainant filed complaint under Section 138 of the NI Act which has been dismissed vide judgment dated 30.01.2019 passed by JMIC, Barnala on the ground of applicant/complainant failing to prove his capacity to led huge loan amount and that the disputed cheque bears the signature of the respondent.

Learned trial court framed following points for determination for proper adjudication of the case:-

1. Whether the complainant has been able to prove the existence of legal liability of accused towards him cogently and beyond all doubts?
2. Whether the accused had issued cheque under consideration for discharging his legal liability?
3. Whether the complainant has proved the case beyond shadow of reasonable doubts?

Learned counsel for the applicant/complainant contended that applicant has fully proved his case by way of evidence against respondent beyond all doubt. He submitted that first of all it shall be presumed, unless the contrary is proved, that the holder of cheque received the cheque, of the nature referred to in Section 138, for the discharge, in whole or in part, of any debt or other liability as provided under Section 139 of the NI Act. In the present case, applicant has himself stepped into the witness box and deposed that there was loan liability of respondent towards him. The respondent had not rebutted the presumption under Section 139 NI Act and also under Section 118 of NIA Act. Reliance is placed on Hon'ble Supreme Court judgment in **K.N. Beena vs. Muniyappan 2001 AIR SC 2895** holding that the burden of proving that a cheque had not been issued for a debt or liability is on the accused by leading cogent evident.

On perusal of the case file, it has come on record that the applicant in his cross-examination has mentioned that he did the work in Trident Company from 1994 to 2014 for the salary of Rs. 23,000/- per month. He also admitted that now he is doing work in factory Rs 12,000/- per month salary and that his wife is doing the work of stitching. It was also admitted that the amount which was given to Karamjeet Kaur was lying in his house and that he has not mentioned the loan amount in his income tax returns.

Learned trial court has rightly observed that the applicant/complainant has failed to prove his capacity to pay the huge amount to respondent. Even the applicant examined the witness to prove that the applicant gave the loan amount to respondent who executed the pronote and receipts in favour of the applicant but the applicant has failed to prove that the disputed cheque bears the signature of the respondent. The applicant has not even examined any handwriting and finger print expert to prove that the disputed cheque bears the signature of the accused.

Learned trial court rightly held that the case of the complainant as well as the presumption u/s 139 of NIA Act stands rebutted due to inherent inconsistency in complainant evidence as well as due to probable defence raised by accused. In this regard, reliance placed on **M/s Laxmi Dyechem vs. State of Gujarat & Ors. (2012) 13 SCC 375** is not applicable as to the factual position in the present case. Learned trial court rightly decided the above-referred points in favour of the respondent and acquitted the respondent of the charges.

In view of the above, this Court does not find any ground to grant leave to appeal and the application is accordingly dismissed.

12.10.2022
V.Vishal

(Sandeep Moudgil)
Judge

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