

231

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-497-2020

DECIDED ON: 30th AUGUST, 2022

M/S LIVE LIFE ENTERPRISES

.....APPLICANT

VERSUS

RAMA ENTERPRISES AND ANOTHER

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Kartar Singh, Advocate
for the applicant.

SANDEEP MOUDGIL, J (ORAL)

The instant application under Section 378 (4) Cr.P.C. has been filed seeking leave to appeal against the acquittal of the respondents-accused in Criminal Complaint No. RBT-1360 of 2016, titled **'M/s Live Life Enterprises vs. Rama Enterprises and another'** under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act')

The brief facts are that the accused No.2 being the proprietor of accused No.1 firm issued the account payee cheques bearing No.000325, dated 25.06.2016 for the sum of ₹2,00,000/-, bearing 000328 dated 10.07.2016 for ₹1,52,880/- both drawn on Bank of Baroda, Safdarjang Enclave, New Delhi-110029 in favour of complainant. The cheques were dishonoured on presentation on 01.07.2016/13.07.2016 with the remarks "funds insufficient". After serving of legal notice, the

The complainant to substantiate his case himself stepped into the witness box, filed affidavit, adduced the original cheques, return memos, legal notice and the postal receipt.

Upon the presentation of complaint, notice was issued to the accused. Accused put their appearance along with his counsel and secured his bail. Thereafter, notice of accusation was served upon the accused for having committed an offence under Section 138 of Negotiable Instruments Act, 1881 (for short “the Act”), vide order dated 11.08.2017 to which he pleaded not guilty and claimed trial.

Thereafter, the plea of defence of accused under Section 363(g) of Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) was recorded vide order dated 11.08.2017, wherein accused has specifically stated that cheques in question bears his signature only. The other particulars over the cheques were not filled by him.

In his cross-examination, an application to substantiate the name of SPA holder of complainant was moved and the same was allowed on 19.12.2018. Further the accused tendered documents Ex.D1 and Ex.D2-retail invoices.

In his defence the complainant did not examine any witness.

Learned counsel for the applicant submits that the learned trial Court has failed to consider the evidence led by the complainant. The trial Court has failed to appreciate the facts that there is an outstanding amount of ₹7,09,108/- against the respondents/accused. The trial Court has not appreciated the document Ex.C-9 which is written calculation and duly admitted by the accused towards their liability to pay the same to the applicant/complainant and also the fact that the accused/respondents have

admitted their signatures on the cheques in question.

It is settled position of law that presumptions under Sections 118 and 139 of the Act are in favour of the holder of the cheque. The presumptions are rebuttable. The onus of rebuttal on the respondent is not as heavy as on the prosecution. The defence taken should be probable defence. On rebuttable of the presumptions, the onus shifts on the complainant.

The complainant has admitted in his cross-examination that amount of ₹4,00,000/- was paid to the accused for the cost of fabric, but complainant in receipt Ex.C9 has not mentioned the afore-said amount of ₹4,00,000/- which clearly indicates that receipt Ex.C-9 is forged and fabricated document and complainant has failed to prove legally enforceable debt and liability against the accused. The complainant himself admitted that he has received the fabric of amounting to ₹4,00,000/- from the accused. The complainant also failed to examine the witnesses in whose presence the document Ex.C9 was executed. As such complainant failed to proved Ex.C9 and also legally enforceable debt and liability against the accused for cheques in question. Moreover, the total outstanding liability as per the complaint was ₹7,09,108 but in Ex.C9 there is mention of an amount of ₹7,05,880/- and there has been no reduction regarding amount of ₹4,00,000/-, which was admitted by the complainant, it clearly shows that the complainant failed to prove outstanding legally enforceable debt and liability against the accused.

The contention of learned counsel for the applicant that the accused admitted his signatures on the alleged cheques is noted to be rejected, as only the fact that the accused admitted his signatures on the

alleged cheque, does not prove the case against the accused. Conviction under Section 138 of the Act cannot be solely on the ground that cheque bears the signatures of the accused. More so, when the trial court noted that the respondent was able to rebut the presumption and the applicant failed to discharge the onus of existing debt or liability on the date of presentation of cheque.

Since the execution of cheque itself is not proved beyond all reasonable doubts, the presumption of Section 139 of the Act is not available to the complainant as existence of legally enforceable debt which is pre-requisite of the presumption under Section 139 of the Act itself remained doubtful.

The Supreme Court in Vijay v. Laxman and another, 2013

(2) JT 562 held as under:

“We are not unmindful of the fact that there is a presumption that the issue of a cheque is for consideration. Sections 138 and 139 of the Negotiable Instruments Act make that abundantly clear. That presumption is, however, rebuttable in nature. What is most important is that the standard of proof required for rebutting any such presumption is not as high as that required of the prosecution. So long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged. Whether or not it is so in a given case depends upon the facts and circumstances of that case. It is trite that the courts can take into consideration the circumstances appearing in the evidence to determine whether the presumption should be held to be sufficiently rebutted. The legal position regarding the standard of proof required for rebutting a presumption is fairly well settled by a long line of decisions of this Court”.

After successful rebuttal of the presumptions by respondents, the complainant has failed to discharge the onus cast upon him that the

No case is made out of legal or factual error, much less perversity in the judgment of the Court below in acquitting the respondents. The view taken by the trial court is plausible view.

No case is made out for grant of leave to appeal.

The application for leave to appeal stands dismissed.

**SANDEEP MOUDGIL
JUDGE**

30th AUGUST, 2022.

sham

- | | |
|---------------------------------|----------|
| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable : | Yes / No |