IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-549 of 2020 (O&M)

DECIDED ON:18th July, 2022

Jatinder Paul

.....Applicant-appellant

VERSUS

Janak Raj

.....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Vishal Aggarwal, Advocate for applicant-appellant.

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AVNEESH JHINGAN, J (ORAL)

This application is filed for grant of leave to appeal against the acquittal judgment passed in Complaint Case No.365 dated 1.3.2017 under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') read with Section 420 IPC .

The brief facts as set up by the complainant are that he advanced loan of Rs.5,00,000/- to the respondent. The payment of loan was given through Cheque bearing No.656421 dated 8.11.2014. For discharge of liability, the respondent issued cheque bearing No.000938 dated 16.11.2016 of Rs.5,00,000/-. On presentation the cheque was dishonoured on 30.12.2016 with the remarks “funds insufficient”. After service of notice, the complaint was filed. The respondent took a defence that shuttering material was taken from the complainant for construction of the house and the security cheque given was misused. The defence of the respondent was considered probable. On failure of the complainant to establish the transaction of loan, the respondent was acquitted.

Learned counsel for the applicant submits that the loan was advanced through cheque. The cheque in question was given for discharge of the liability. The trial Court erred in acquitting the respondent.

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 ashigh 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".*

In the present case, the respondent was successful in rebutting the presumption. The complainant failed to adduce any evidence to support the allegations that the respondent had taken a loan which was paid by the complainant through cheque bearing No. 000938. No account statement or bank record was produced. The complainant while deposing as CW1 produced copy of statement Ex.DA and during cross-examination he faltered as the entries in the statement produced was of 2018 and were not even reflecting the name of the bank. The respondent examined Savita Thakur, ARK Judicial Record Room to show that the complainant had filed a complaint against number of persons averring that he had advanced loan to those persons.

The complainant failed to discharge the onus casted upon him after the rebuttal of the presumption by the respondent.

No case is made out for grant of leave, as no legal or factual error, much less perversity has been pointed out in the impugned judgment. The conclusion arrived at by the trial court is plausible reason.

Dismissed.

Since the main case has been decided, the pending application, if any is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

18th July, 2022
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Whether speaking/reasoned *Yes*
Whether reportable *Yes*