IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-270 of 2021 (O&M)
Date of Decision: 5th July, 2022

Azad Singh

Applicant

Versus

Pawan Kumar

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Nonish Kumar, Advocate for the applicant.

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<u>AVNEESH JHINGAN, J (Oral):</u>

This is an application under Section 378(4) Cr.P.C. for grant of leave to appeal against acquittal of the respondent in Criminal Complaint No. 2813 of 2017. The application is accompanied by an application for condoning the delay of 30 days.

As per the case set up by the complainant, he had advanced loan of Rs.4,50,000/- to the respondent. A cheque bearing No. 092843 dated 24.3.2017 was issued in his favour for discharge of liability. On presentation, the cheque was dishonoured vide memo dated 27.3.2017. The cheque was returned with the remarks 'payment stopped by drawer'. After issuing legal notice, the complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') was filed.

The applicant relied upon the postal receipt, original cheque, return memo, legal notice, statement of account and copies of jamabandi to support the case.

The respondent took a defence that his cheque book including the cheque in question was taken by the complainant on the pretext of getting the loan sanctioned from the bank in his favour. On non-sanctioning of the loan, the respondent requested to the applicant to return the cheque book, he informed that the cheque book was missing. On advice from the bank officials, the payment was stopped on 14.10.2013.

It was held that respondent was successful in rebutting the presumption under Section 139 of the Act. The complainant failed to adduce any evidence to prove the transaction of loan between him and the respondent and he was not having financial capacity to lend loan of Rs.4,50,000/-, the respondent was acquitted.

Learned counsel for the applicant submits that failure to prove the financial capacity cannot be a ground for acquittal of the respondent. He further submits that for giving loan to respondent the amount was withdrawn from the bank account.

From the reading of the judgment of acquittal, it is forth-coming that the applicant failed to adduce evidence to substantiate the allegations of lending loan to the respondent.

There is no dispute on the proposition that presumption under Sections 118 and 139 of the Act are in favour of the holder of cheque but the presumption is rebuttable. Once the respondent was successful in rebutting the presumption, the onus shifts on the complainant.

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".

In the present case, no evidence was adduced by the complainant to discharge the onus that the cheque was issued for discharge of debt or other liability.

It would not be out of place to mention that the payment of cheque was stopped in 2013 whereas it was alleged that the loan was advanced in 2015 and thereafter the cheque was presented in 2017. The time line supports the defence taken 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.

The application is dismissed.

Since the application for grant of leave to appeal is dismissed on merits, the application for condonation of delay is disposed of accordingly.

[AVNEESH JHINGAN]

JUDGE

5th July, 2022
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No