242 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-424-2021
Date of Decision: 7th July, 2022

M/s Sandhya Finance Ltd. Through its director
... Applicant

Versus

Sukhdev
... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ashwani Bhardwaj, Advocate for the applicant.

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AVNEESH JHINGAN , J.(Oral)

1. This is an application under Section 378(4) Cr.P.C. for grant of leave to appeal against acquittal of the respondent in Complaint No. 1458-II of 2017, dated 13th October, 2017, under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

2. The complainant company was engaged in the business of finance. The loan of Rs.2,00,000/- was advanced to Vinod and Kanta Rani. Respondent Sukhdev Singh and Harmesh stood as Guarantor. The loan was taken for purchasing a CNG auto rikshaw. The loan was to be repaid in 36 monthly installments of Rs. 11,556/-. On default of repayment, the cheque bearing No. 862494 dated 25th July, 2017 amounting to Rs. 90,000/- drawn on PNB Bank Najafgarh Branch, New Delhi issued by the respondent as Guarantor was presented. The cheque was dishonoured vide memo dated 4th August, 2017 with the remarks 'insufficient funds'. After issuing the legal notice, complaint was filed.

3. The complainant in order to support the allegations relied upon resolution, certification of incorporation, memorandum of association, list of directors, original cheque, cheque return memo, legal

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notice, postal receipt and copy of agreement for loan.

4. The respondent took a defence that the co-guarantor Harmesh had deposited Rs. 70,000/- and the balance amount was paid by Vinod and Kanta along with interest, there was no legally enforceable liability against the respondent.

5. The trial court accepted the defence and on failure of the complainant to discharge the onus that any debt or legally enforceable liability was due on the date of presentation of the cheque, acquitted the respondent.

6. Learned counsel for the applicant submits that the trial Court erred in acquitting the respondent. The loan agreement proving the advancement of loan and the mode of repayment was on record. Though 70,000/- was paid by the co-guarantor, still there was outstanding balance. He further argued that in the same loan account Rs.67,500/- paid by Kanta Devi was compensation awarded to the complainant in proceedings under Section 138 of the Act.

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

8. The Supreme Court in **<u>Vijay v . Laxman and another,</u> 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*

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> *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."*

9. After successful rebuttal of the presumptions by respondent, the complainant failed to discharge the onus casted upon it that the cheque was issued for discharge of debt or other liability.

10. Accused took the defence that the loan was repaid, the complainant failed to prove that there was outstanding amount and no account books, ledger account or statement of loan was produced.

11. 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.

12. The application is dismissed.

(AVNEESH JHINGAN)
JUDGE

7th July, 2022
Parveen Sharma

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

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