IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-481 of 2021 (O&M)
Date of Decision: 11th July, 2022

Veshno Dass Kohli

Applicant

Versus

Pawan Kumar Sharma

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ojas Bansal, Advocate for
Mr. S. K. Aggarwal, Advocate for the applicant.

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AVNEESH JHINGAN, J (Oral):

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. 2931-II of 2018.

The case as set up by the applicant was that he lended loan of Rs.5,00,000/- to the respondent on 17.7.2012. The loan was to be repaid along with interest @ 2% per month. The respondent was not able to repay the loan. On 25.3.2017, a settlement was reached and respondent had to pay Rs.8,00,000/- to the applicant. To discharge the debt, cheque bearing No. 521713 dated 2.10.2018, drawn on SBI, Mini Secretariat, Hisar was issued. On presentation, the cheque was dishonoured vide memo dated 9.10.2018 with the remarks “funds insufficient”. After serving legal notice, complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') was filed.

The applicant to substantiate the allegations produced original cheque, cheque return memo, legal notice and postal receipt.

The respondent took a defence that the loan was repaid on 30.11.2012 by depositing amount of Rs.5,17,300/- in the account of the applicant and the blank cheque given for security at the time of advancing of loan was mis-used.

The respondent examined Clerk of Hisar Urban Co-operative

Bank Ltd. who brought the record pertaining to repayment of the loan in the account of the applicant. Deposit receipt and copy of Saving Account Ledger of the respondent were tendered in evidence.

Neither the deposit of Rs.5,17,300/- was disputed by the applicant nor evidence was adduced that any debt or other liability was due. No case was set up that the payment deposited by the respondent in the applicant's account was with regard to some other transaction. The respondent was acquitted.

Learned counsel for the petitioner submits that the trial court erred in acquitting the respondent. The contention is that the respondent never stepped into the witness box. Respondent had made an application for cross-examining the applicant but the same was withdrawn.

There is no dispute on proposition that presumptions under Sections 118 and 139 of the Act are rebuttable and the onus on the accused under the Act is not as strict as is on the prosecution. On rebuttable of presumptions, the onus shifts on the applicant.

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".

The respondent was successful in rebutting the presumptions. He himself might not have stepped into the witness box but he produced a witness and evidence to substantiate repayment of the loan by depositing Rs.5,17,300/- in the account of the applicant. After rebuttable of presumption by the respondent, the applicant failed to discharge the onus casted upon him. Withdrawal of the application for re-calling of the applicant for re-examination is of no help for discharging the onus that shifted on applicant.

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 accompanying applications are also disposed of accordingly.

[AVNEESH JHINGAN]

JUDGE

11th July, 2022
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1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes