258 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3421-2018
Date of Decision: 20th July, 2022

Gurpreet Singh

... Petitioner

Versus

Palwinder Singh and another

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. V.K. Kaushal, Advocate for the petitioner.
Mr. Sandeep Kumar, DAG, Punjab.

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AVNEESH JHINGAN , J.(Oral)

1. This petition is filed against the judgment dated 16th August, 2018, passed by Learned Additional Sessions Judge, Amritsar whereby respondent No.1 has been acquitted from charges under Section 138 of Negotiable Instrument Act, 1881 (for short 'the Act').

2. On dishonouring of cheque bearing No. 208309, dated 10th June, 2014, Rs.1,40,000/- on 14th June, 2014 with the remarks 'Account closed', the petitioner filed a complaint under the Act.

3. The case set up by the petitioner was that respondent Palwinder Singh had taken a loan of Rs.1,40,000/- and to discharge the liability, he issued the cheque in question, which was dishonoured. A legal notice was served.

4. In the complaint filed, respondent No. 1 took a defence that a cheque was handed over to the father of the petitioner in 2007, to secure the loan taken from him. The loan was repaid but the cheque given for security was misused by the petitioner. It was further stated that a complaint was made to the police commissioner with regard to non returning of the cheque by the father of the petitioner.

5. Respondent No.1 was convicted vide judgment dated 5th September, 2016 and vide order of even date, he was sentenced to undergo one year imprisonment and to pay a fine of Rs. 1,75,000/-, in case of default of payment of fine, rigorous imprisonment for a period of one month. Aggrieved of conviction and quantum of sentence, appeal was preferred. The Appellate Court considering defence as probable, on failure of the respondent to prove his financial capacity to advance the loan and that a loan transaction took place between him and the petitioner, acquitted the respondent No.1.

6. Learned counsel for the petitioner submits that the cheque, bank memo, legal notice and postal receipt were exhibited and the Appellate Court erred in acquitting the respondent No.1, on the ground that petitioner failed to prove his financial capacity for advancing the loan.

7. There is no quarrel on the proposition that the presumptions under Sections 118 and 139 of the Act are in favour of the holder of the cheque but are rebuttable. The onus on the accused in proceedings under Section 138 of the Act is not as strict as on the prosecution. Once the presumptions are rebutted by the accused, the onus shifts on the complainant.

8. Respondent No.1 was not acquitted only on the ground that the petitioner failed to prove his financial capacity to advance the loan but he was acquitted as the petitioner had not produced any evidence to substantiate the allegations of advancing loan to respondent No.1, or to establish debt due on date of presentation of cheque.

9. No case for interference in the impugned appellate order is made out, as no legal or factual error, much less perversity has been pointed out.

The conclusion arrived at by the Appellate Court is plausible reason.

10. The petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

20th July, 2022
Parveen Sharma

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