(216) IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1438-2021
Date of decision : 24.02.2022

Amit

... Petitioner

Versus

State of Haryana & another

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Abhimanyu Singh, Advocate for the petitioner.
Mr. Parveen Aggarwal, DAG, Haryana.

Mr. Siddharth Sihag, Advocate for respondent No.2.

(Through Video Conferencing)

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JASJIT SINGH BEDI, J. (ORAL)

The challenge in the present revision petition is to the order dated 28.10.2021 passed by the learned Additional Sessions Judge, Charkhi Dadri, Haryana, vide which the appeal preferred by the petitioner against the judgment of conviction and order of sentence dated 04/05.06.2018 passed by the Sub Divisional Judicial Magistrate, Charkhi Dadri, convicting the appellant under Section 138 Negotiable Instruments Act and sentencing him to undergo rigorous imprisonment for a period of one year and to pay compensation to the tune of Rs.3,70,000/- under Section 357(3) Cr.P.C., has been dismissed.

2. The brief facts of the case, as would emanate from the judgment dated 04.06.2018 passed by learned SDJM, Charkhi Dari, are as under:-

i. The petitioner/accused, in order to discharge his legal liability issued a cheque bearing No.015261 dated 15.05.2017 amounting to Rs.3,35,000/-, drawn on IDBI Bank, Branch Office Charkhi Dadri, in favour of the complainant. It has further been alleged that cheque was presented by the complainant for its realization, but the same was dishonoured with remarks "Funds Insufficient" vide memo dated 29.05.2017. It has further been alleged that on receiving information regarding dishonor of cheque, the complainant got issued a demand notice dated 13.06.2017 to the accused, but despite that, the accused has failed to make the payment of the cheque amount till date. Constrained by these circumstances, the complainant filed the complaint in question.

ii. After having recorded the preliminary evidence, the Court on finding a prima facie case for the commission of offence punishable under Section 138 of Negotiable Instruments Act, to be made out against the accused, summoned the accused to face trial vide order dated 22.08.2017.

iii. On notice, accused appeared and after hearing the learned counsel for the complainant and the learned counsel for the accused and on finding a prima facie case for the commission of offence *punishable under Section 138 of Negotiable Instruments Act to be made against the accused, he was served with notice of accusation to which he pleaded not guilty and claimed trial.*

iv. In order to prove his case, the complainant got examined Vikas Kumar, Chief Manager, PNB Bank, Charkhi Dadri as CW1 and complainant Kuldeep himself has stepped into witness box as CW2.

v. Further, the complainant had placed on record before the Court, Ex.C1 Original cheque bearing No.015261 dated 15.05.2017, Ex.C2- Cheque return memo dated 29.05.2017, Ex.C3- Legal notice dated 13.06.2017, Ex.C4- Postal receipt, Ex.C5- Receipt of Cheque, Ex.C4/A-Consignment track report and Ex.CW1/A- Statement of account. Thereafter, evidence of complainant was closed by complainant vide his separately recorded statement.

vi. The statement of the accused under Section 313 of the Code of Criminal Procedure was recorded without oath, wherein he has denied all the incriminating circumstances appearing against him and expressed his desire to lead evidence in defence.

vii. No evidence in defence was led by accused and the same was closed by him vide his separately recorded statement.

viii. In order to prove his case, the complainant got examined Vikas Kumar, Chief Manager, Punjab National Bank, Charkhi Dadri, as CW-1, who has stated that the account of complainant Kuldeep is with Punjab National Bank, Charkhi Dadri and in his account cheque Ex.C1 was presented on 26.05.2017 for encashment and receipt in that regard is Ex.C5. He has further stated that cheque was sent to IDBI Bank, Dadri, but the same was dis-honoured on account of funds insufficient and memo in that regard is Ex.C2. He has further stated that copy of account statement is Ex.CW1/A.

ix. Further, the complainant Kuldeep himself stepped into witness box as CW2 and has tendered in his examination-in-chief his duly sworn affidavit Ex.CW2/A, wherein he has deposed on the lines of complaint.

x. The complainant placed on record before the Court, Ex.C1 Original cheque bearing No.015261 dated 15.05.2017, Ex.C2- Cheque return memo dated 29.05.2017, Ex.C3- Legal notice dated 13.06.2017, Ex.C4- Postal receipt, Ex.C5- Receipt of Cheque, Ex.C4/A-Consignment track report and Ex.CW1/A-Statement of account.

3. Based on the evidence led before the trial Court (Sub Divisional Magistrate, Charkhi Dadri) and on consideration of the rival contentions of both the parties, the trial Court below convicted and sentenced the accused/petitioner as stated above. The various arguments made were discussed in detail pursuant to which the learned Trial Court came to a conclusion of the guilt of the petitioner.

4. Against the said judgment of conviction and order of sentence, an appeal was preferred before the Court of learned Additional Sessions Judge, Charkhi Dadri. In the said appeal, it was argued that mere production of the cheque was not enough and it had not been proved that the cheque was in fact issued for the satisfaction of any legal enforceable debt. In fact, the cheque had been issued given as a security. It was further contended that the complainant had failed to lead any cogent evidence especially to prove the pre-existing liability and that the issuance of the demand notice was also not proved on the record. The arguments raised by the learned counsel for the accused were countered by the learned counsel for the complainant submitting that there was a presumption that the cheque was issued for the discharge of legal enforceable debt and the said presumption had not been rebutted. It was also contended by the learned counsel for the complainant that the accused had no where contended that the cheque in question does not bear his signature and therefore, it was a clear-cut admission on the part of the accused that the cheque was issued for the discharge of a legal enforceable debt. In support of his contentions, learned counsel for the complainant relied upon *'APS Forex Services Pvt. Ltd. Vs. Shakti*

International Fashion Linkers and Others, 2020(2) RCR (Criminal) 64' and *'M/s Gimpex Private Limited vs Manoj Goel Criminal Appeal No.1068 of 2021 {arising out of SLP (Criminal) No.6564 of 2019} decided on 08.10.2021.*'

5. After hearing the counsel for both the parties and examining the evidence, the learned Appellate Court (Additional District Judge, Charkhi Dadri) came to the conclusion that the signatures on the cheque were never disputed and therefore, a presumption arose under Section 139 of the Negotiable Instruments Act in favour of the complainant that the cheque was issued for the discharge of legal enforceable liability. The Court also came to the conclusion that the presumption was though rebuttable but the defence raised in rebutting such presumption must be probable and capable of being accepted by the Court. It was further held by the learned Additional Sessions Judge, Charkhi Dadri that the plea raised in defence was that the cheque in question was issued as a security but in fact, the case of the accused was that the cheque-book had been stolen and somehow the cheque was taken out by the complainant and mis-utilized. It was further held that the accused could not rebut presumption under Section 139 NI Act whereas the complainant had also shown the necessary financial capacity to advance the loan in question and that Ex. C3/legal notice, Ex. C4/Postal receipt, Ex. C4/A-consignment track report, were duly exhibited by the complainant in his testimony as CW-2. In the light of the discussions, the learned Additional Sessions Judge, Charkhi Dadri, did not find any illegality in the

impugned judgment of conviction dated 04.06.2018 and order of sentence dated 05.06.2018 and consequently, dismiss the appeal.

6. Learned counsel for the petitioner has raised almost similar grounds as were raised by the accused before the Lower Appellate Court. He firstly submits that the cheque-book of the petitioner-accused had been missing and the complainant has misused the cheque. He then contends that the complainant did not have the necessary financial capacity to advance the loan in question, the return of which entailed the issuance of the cheque. To buttress his arguments, he states that there was no ITR or account statement to suggest that the complainant had the necessary financial capacity to advance the loan. He thus, contended that the judgment of conviction and that the order of the Additional Sessions Judge, Charkhi Dadri, confirming the said conviction were based on conjectures and surmises.

7. I have heard the learned counsel for the parties at considerably length.

8. Section 139 of the Negotiable Instruments Act is reproduced herein below:-

> *'Presumption in favour of holder: It shall be presumed unless the contrary is proved, that the holder of the cheque received the cheque of the natured referred to in Section 138 for the discharge in whole or in part, of any debt or other liability'*

9. A perusal of the afore-mentioned provision would show that there is a presumption that the cheque in question was issued in

discharge of a legally enforceable debt. Undoubtedly, the said presumption is rebuttable. However, in the present case there is absolutely nothing on record to show that the accused-petitioner was able to rebut the said presumption by way of cross-examination or by leading of any defence evidence.

10. It is the categoric finding of both the Courts below that the accused-petitioner had at no stage argued or averred that the signatures on the cheque did not belong to him. Once, the signatures are admitted, the presumption under Section 139 NI Act would arise and in the absence of rebuttal, the cheque would be deemed to have been issued in the discharge of legal liability. It would also be relevant to state that neither in the cross-examination of the complainant as CW-2 nor in the statement of the petitioner-accused recorded under Section 313 Cr.P.C. was it stated that the cheque in question was given as a security. In fact, the suggestion and the cross-examination was that the complainant had used one cheque out of the lost cheque-book of the petitioner-accused. Thus, the petitioner-accused has taken contrary stands during the course of proceeding. On the one hand, it is stated that the stolen cheque was misused and on the other hand, it is argued that the cheque was issued as a security.

11. In ***'APS Forex Services Pvt Ltd. Versus Shakti International Fashion Linkers & others (supra)'***, the Hon'ble Supreme Court has clearly held that once the accused admits the issuance of the cheque, which bears his signature, there is a presumption that there exists a legally enforceable debt. It is further held therein that accused is

required to lead evidence to show that entire amount due and payable to the complainant was paid.

12. Similarly, in '***M/s. Gimpex Private Limited Versus Manoj Goel (supra)'***, the Hon'ble Supreme Court observed that once the complainant discharges the burden of proving that the instrument was executed by the accused, the presumption under Section of 139 N.I. Act shifts the burden on the accused. In the present case, neither from the cross-examination of the witness of the complainant not by leading any defence evidence, the petitioner has been able to rebut the presumption contained under Section 139 of NI Act.

13. Even otherwise also, the petitioner-accused himself did not appear in the witness box in support of the defence so taken by him for the reasons best known to him. Even in his statement recorded under Section 313 Cr.P.C., it is not the version of the petitioner-accused as argued by his learned counsel. Once the complainant discharges the burden of proving that the instrument was executed by the accused, the presumption under Section 139 NI Act shifts the burden on the accused. The expression, unless the contrary is proved, would demonstrate that it is only for the accused at the trial to adduce evidence of such facts or circumstances on the basis of which the burden stand discharged.

14. It would be relevant to mention here that the complainant-respondent has been able to show his financial capacity to advance the loan as he was having six acres of agricultural land. Even otherwise, the amount advanced by the complainant to the petitioner-accused is not

such a heavy amount, which could not have been so provided to the petitioner-accused.

15. The arguments of the petitioner-accused that the legal notice issued by the complainant has not served is also incorrect also as the complainant in his testimony as CW-2 has duly exhibited legal notice C-3 and postal receipts C-4 along with consignment track record C-4/A. In this view of the matter, the factum of service of legal notice stands proved beyond doubt.

16. In view of the discussions hereinabove, I see no ground to interfere in the well-reasoned judgments dated 28.10.2021 passed by the learned Additional Sessions Judge, Charkhi Dadri and the judgment of conviction and the order of sentence dated 04/05.06.2018 passed by the Sub Divisional Judicial Magistrate, Charkhi Dadri.

17. Accordingly, the present revision petition is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

24.02.2022
JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No