

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A No.544-MA of 2015

Date of decision : October 10 , 2022

Gaurav Chopra

..... Petitioner

Versus

M/s Bigcat Digital Media and others

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. P. R. Yadav, Advocate
for the applicant.

None for respondent Nos.1 and 2.

Mr. Sumit Jain, Addl. A.G. Haryana.

PANKAJ JAIN, J.

The complainant seeks leave to appeal against the judgment dated 31.10.2014 whereby the complaint filed by the applicant against the respondent under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') stands dismissed. As per the complainant respondent took a loan of Rs.5 lacs. To discharge of his liability of two cheques bearing number 801366 dated 27.7.2013 and 801372 dated 5.8.2013 were issued. When presented, both the cheques were dishonoured. It is claimed that the accused issued another cheque bearing number 801370 dated 18.9.2013 for an amount of Rs.5 lacs. However, the same was also dishonoured with the remarks "payment stopped by drawer" vide memo dated 23.9.2013. The trial court while dismissing the complaint held as under:-

"16. Perusal of above testimonies of complainant and accused, it is clear that the complainant could not prove his lending of loan to the accused as admittedly no receipt, etc was obtained. No record/ accounts as admitted by complainant has been

produced by him. complainant was not clear about the date of loan in his cross examination. Admittedly, both of them shared same table space with each other from April 2012 to August-September 2013. Admittedly, the cheques in question were dishnoured due to the reason of payment stopped drawer. Admittedly, accused has transferred a sum of Rs. 9 Lacs to the account of complainant on 09.09.2013. When such is the case, there was no occassion for the complainant to present cheque no. 801366 and 801372 just after one day of receipt of above payment of Rs. 9 Lacs. Also, there was no occassion to present the cheque in question on 21.09.2013. The accused has taken the same defence when he replied to the statutory legal notice of complainant, the receipt of which has been admitted. The complainant has been cross examined on same lines and the accused has put forth the same story in his defence. Once, the cheques of the accused have been misplace, the best option was to get the payment stopped by his bankers, which has exactly been done by accused.

17. Even if for the sake of arguments, let us presume that the entire defence/ story put forth by the accused is false, then also the case of the complainant is doubtful. This is primarily because the receipt of Rs. 9 Lacs just one day before presenting the other two cheques that is cheque no. 801366 and 801372 has been unexplained. The complainant was in knowledge of defence of accused, and the onus shifted upon the complainant to prove otherwise. Another vital aspect of the case which raises yet another doubt in the case of complainant is that when the complainant had cheque no. 801366 and 801372 which are dated 27.07.2013 and 05.08.2013 with him, why did he not presented the same till 9.2013. In these circumstances, the argument of learned counsel for accused are acceptable.”

Learned counsel for the applicant while attacking the judgment submits that the impugned judgment of acquittal cannot be sustained. It has been asserted that the acquittal is mainly on two grounds i.e.

a) no receipt etc.of loan was proved and

b) Rs.9 lacs was transferred in the account of complainant on 5.9.2013.

Learned counsel for the applicant submits that once the signature on the cheque leaf were admitted by the accused, complainant was not required to prove payment of loan. He further submits that rather defence taken by the accused that he paid Rs. 9 lacs on 5.9.2013 eats into the first reasoning recorded by the trial court. He further submits that so far as the receipt of Rs.9 lacs is concerned the same was fully explained by the applicant. He thus, claims that the acquittal of the respondent deserves to be set aside being against the settled proposition of law.

I have heard learned counsel for the applicant and have gone through the record of the case.

As per settled proposition of law laid down by the Apex Court in ***Rangappa Vs. Sri Mohan, (2010) 11 SCC 441***, wherein it has been held that :-

“27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden.

Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.”

Similarly in the case of ***Kishan Rao V. Shankar Gouda, (2018) 8 SCC 165*** relying upon the law laid down in ***Rangappa's*** case *ibid* it was held that it is not necessary for the accused to lead evidence in defence to rebut the presumption. Same has been reiterated in ***ANSS Raja Shekhar V. Augustus Jeba Ananth, (2019) SCC Online SC 185.***

The presumption under Section 139 of the Act is rebuttable. The accused is well within his right to rely upon the evidence lead by the complainant to rebut the said presumption. The standard of proof with respect to defence of an accused is preponderance of probabilities. In the present case, the cheques in question were dishonoured by assigning the reason “payment stopped by drawer”. The cheque is dated 18.9.2013. On 9.9.2013 the accused transferred a sum of Rs. 9 lacs to the account of the complainant. The accused replied to the statutory legal notice to the complainant raising same defence. The receipt of such reply is not disputed. The accused has thus raised a probable defence. So far as the possession of the applicant over the cheques in question is concerned it is also admitted fact that both the parties used to share same table space from April 2012 to September 2013. The accused claims that after the cheques were misplaced

he stopped the payment which is the most obvious thing that a person does.

Scope of appeal has been culled out by the Apex Court in ***Chandrappa and ors. V. State of Karnataka, 2007 (2) RCR (Criminal) 92*** wherein it was held that :-

“(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

Learned counsel for the applicant has not been able to point out any evidence on record which has not been considered by the trial court. He is also not in a position to deny the fact that the view taken by the trial court is a more probable view.

Keeping in view these facts and circumstances which are

peculiar to the present case and the settled proposition of law as discussed hereinabove, no ground to interfere in the well reasoned judgment passed by the trial court is made out.

Consequently, the present application seeking leave to appeal is dismissed being without merit.

(PANKAJ JAIN)
JUDGE

October 10 , 2022
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Whether speaking/reasoned	Yes
Whether Reportable :	No