

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A 1017-MA of 2017

Date of Decision: 17th May, 2022

Balwinder Singh

... Applicant

Versus

Satnam Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Nakul Sharma, Advocate for the applicant.

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. 98-2 of 13.9.2012 vide judgment dated 29.10.2016.

As per the case set up by the complainant, the respondent borrowed a sum of Rs.5,00,000/- from the complainant and in order to discharge the liability, cheque No. 218562 dated 2.7.2012 for an amount of Rs.5,00,000/- drawn on Oriental Bank of Commerce, Ferozepur Cantt, was issued in favour of the complainant. On presentation, the cheque was dishonoured vide memo dated 4.7.2012 with the remarks "insufficient funds". After giving legal notice, complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') was filed.

The complainant filed an affidavit reiterating the allegations and proved original cheque, bank memo, copy of the legal notice and the postal receipt. In his statement under Section 313 Cr.P.C., the respondent stated that he stood guarantor for Nachattar Singh against whom the

complaint was filed by the complainant. Nachattar Singh was declared proclaimed offender and the respondent was falsely implicated.

To rebut the presumption the respondent took a stand that blank cheque was given as a security for the amount due for purchase of cow. The due amount of Rs.28,000/- was paid, firstly by paying Rs.3,000/- and thereafter Rs.25,000/-. To substantiate the stand taken, the respondent examined DW-2 Gurmeet Singh. He deposed that in the month of November, 2012 the respondent purchased a cow from the complainant for an amount of Rs.28,000/-. In his presence Rs.3,000/- was paid to the complainant and a blank cheque given as security. The complainant told that interest @ 10% would be charged on the remaining amount.

DW1-Balbir Singh was examined. As per his deposition, he gave Rs.25,000/- to the respondent in June, 2012 who further gave it to the complainant in lieu of purchase of cow but the blank cheque was not returned.

The complainant had not pleaded in complaint particulars regarding date, month or year of advancing loan. In his cross-examination, he stated that the amount was given in June, 2002. The trial court noted that the complaint was filed in 2012, cheque was dated 2.7.2012 hence there was time difference of ten years. Moreover, there were no written documents with regard to lending of money. The complainant further admitted that the amount was given to the respondent in the presence of Darshan Singh but Darshan Singh was not examined.

The trial court considering the factual position and the evidence adduced concluded that the respondent was able to rebut the

presumption raised against him under Sections 118 and 139 of the Act. The complainant however failed to discharge the onus shifted on him after rebuttal of the presumptions and the respondent was acquitted.

Learned counsel for the petitioner submits that there was variation in the stand taken by the respondent in the statement made under Section 313 Cr.P.C. and the defence taken.

The contention is devoid of merit. It is trite law that statement made under Section 313 Cr.P.C. is not an evidence. The respondent had produced two witnesses to support his stand that the cheque was given as security for the amount payable for purchase of cow and the entire amount due was paid.

The Supreme Court in Edmund S. Lyngdoh v. State of Meghalaya, 2016 (15) SCC 572, held:

“21. Where the accused gives evasive answers in his cross-examination under Section 313 Cr.P.C., an adverse inference can be drawn against him. But such inference cannot be a substitute for the evidence which the prosecution must adduce to bring home the offence of the accused. The statement under Section 313 Cr.P.C. is not an evidence. In Balwant vs. State of U.P. (2008) 9 SCC 974, this Court held that conviction of the accused cannot be based merely on his statement recorded under Section 313 Cr.P.C. which cannot be regarded as evidence. It is only the stand or version of the accused by way of explanation explaining the incriminating evidence/circumstances appearing against him. The statement

made in defence by the accused under Section 313 Cr.P.C. can certainly be taken aid of to lend credence to other evidence led by the prosecution. Statements made under Section 313 Cr.P.C. must be considered not in isolation but in conjunction with the other prosecution evidence.”

The conclusion of the trial court cannot be faulted as it is settled law that presumption under Section 139 of the Act is a rebuttable. The respondent successfully rebutted the presumption against him, thereafter, the complainant failed to produce even an iota of evidence to prove that the cheque in question was issued in discharge of debt or other liability.

No case is made out for grant of leave to appeal.

The application is dismissed.

(AVNEESH JHINGAN)
JUDGE

17th May, 2022
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Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No