

2023:PHHC:057227

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-559-MA-2012(O&M)

Date of decision:18.04.2023.

M/s P. P. Automotive

...Applicant/appellant

VS.

Jai Singh

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Saurabh Bajaj, Advocate
for the appellant.

Mr. Pratap Singh Gill, Advocate
for the respondent.

N.S.Shekhawat J.

1. The appellant/applicant has preferred the present appeal against the impugned judgment dated 22.07.2011 passed by Judicial Magistrate 1st Class, Karnal, whereby the respondent/accused was ordered to be acquitted. The learned trial Court held that the appellant had failed to prove on record that the cheque in question was issued by the respondent in discharge of his legally enforceable debt or liability and accordingly, the respondent was acquitted of the notice of accusation under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'Act').

2. In the present case, the appellant had filed the criminal complaint by alleging that the appellant is the authorised dealer of Mahindra & Mahindra Company and the respondent had purchased one Bolero Excel LMV vehicle

2023:PHHC:057227

from the appellant vide invoice dated 19.10.2007 for a sum of Rs.5,20,000/-.

The respondent paid a sum of Rs.50,000/- in cash and the remaining sale consideration of Rs.4,70,000/- was paid by the respondent in the form of a cheque bearing No. 659812 dated 26.03.2008, issued in favour of the appellant, drawn on UCO Bank, Sataun, District Sirmor (HP). It was also alleged that the said cheque was issued by the respondent towards his legal liability and towards the payment of balance sale consideration of the above said vehicle, purchased by the respondent. However, when the appellant presented the said cheque for payment, through his banker, the said cheque was returned unpaid with the memo dated 11.04.2008, containing remarks 'insufficient funds'. After receiving the information of dishonouring of the above said cheque, the appellant got a legal notice served by registered AD on 29.04.2008 through his counsel upon the respondent, calling upon him to make the payment of the above said cheque amount within a period of 15 days from the date of receipt of the legal notice. However, in spite of issuance of a legal notice, the respondent did not make the payment and the appellant was constrained to present a complaint in the Court of learned Judicial Magistrate, Karnal with the above mentioned broad allegations. Vide the impugned judgment, the learned trial Court held that the appellant failed to prove on record that the cheque Ex.C-3 was issued by the respondent/accused in discharge of his legally enforceable debt or liability and accordingly, acquitted the respondent. The appellant had initially preferred an appeal before the Court of learned Additional Sessions Judge, Karnal and vide the judgment dated 26.09.2011, the learned Sessions Court held the appeal to be not maintainable and accordingly, the present appeal

2023:PHHC:057227

was filed before this Court against the impugned judgment dated 22.07.2011 passed by the Court of Sh. Vivek Goyal, learned Judicial Magistrate 1st Class, Karnal.

3. I have heard learned counsel for the parties and have carefully perused the original trial Court record.

4. Learned counsel for the appellant vehemently argued that the learned trial Court had passed the impugned judgment by completely overlooking the evidence led by him. The accused had set up an imaginary story of involvement of some finance company, which had allegedly assured them to get the vehicle financed from some other company and in that eventuality, 7 cheques were allegedly given by the respondent to Bhagwati Finance Company, Paonta Sahib (Punjab). Learned counsel further contended that the cheque in question was issued by the respondent for discharging his legal liability and since an amount of Rs.4,70,000/- was due against the respondent, he had issued the cheque to the appellant. Still further, there was a statutory presumption in favour of the present appellant and the respondent had failed to rebut the same.

5. On the contrary, learned counsel appearing on behalf of the respondent vehemently argued that in the instant case, it was evident from Ex.C-1 and C-2 that the vehicle was purchased by the respondent under Agreement of hire purchase/lease/hypothecation with Mahindra & Mahindra Financial Services Limited. Ex.C-1 was the copy of Sale Certificate and Ex.C-2 was the copy of Retail Invoice dated 19.10.2007, which clearly showed that the loan was provided by Mahindra & Mahindra Financial Services Limited,

2023:PHHC:057227

whereas, the cheque in question was in the name of “P.P. Automotive, Karnal” i.e. the appellant. Thus, the learned trial Court correctly held that the cheque was not issued in discharge of legally enforceable debt or liability and the respondent was rightly acquitted by the learned trial Court. Learned counsel further contended that the complainant had to prove his own case by leading cogent and convincing evidence and can never take advantage of the weaknesses of the case of the accused. Thus, he prayed for dismissal of the present appeal.

6. Having considered the submissions made by both the sides, this Court is of the considered view that the findings recorded by the learned trial Court are liable to be upheld in view of the following discussion.

7. The appellant/complainant had set up a case that the respondent/accused had purchased a Bolero Excel LMV Vehicle from the appellant vide invoice dated 19.10.2007 for a sum of Rs.5,20,000/- and the respondent had paid a sum of Rs.50,000/- in cash and the remaining sale consideration of Rs.4,70,000/- was paid by the respondent in the form of a cheque in question. It was further stated that the said cheque was issued by the respondent towards his legal liability and towards the payment of balance sale consideration of the above said vehicle, purchased by the respondent. In the instant case, the appellant and the respondent were not known to each other earlier. Admittedly, the vehicle was purchased on 19.10.2007 and if the story of the appellant is to be believed, the respondent should have issued the cheque of Rs.4,70,000/- on 19.10.2007 itself. Even the appellant placed on record the Sale Certificate, dated 19.10.2007 as Ex.C-1 and Retail Invoice dated

2023:PHHC:057227

19.10.2007 as Ex.C-2. It is apparent that the total amount of Rs.5,20,000/- stood paid on 19.10.2007 itself. There was no question of paying of balance sale consideration of Rs.4,70,000/- on 26.03.2008 by the respondent. This clearly shows that the defence raised by the respondent was more probable, wherein he alleged that he had given seven blank signed cheques to Suresh Kumar, dealing hand of Bhagwati Finance Company and the same were later misused by the appellant/complainant. If the vehicle was purchased by the respondent on 19.10.2007 and he got the vehicle financed on or before 19.10.2007, the respondent had no reason to issue the cheque dated 26.03.2008.

8. Apart from that, from a bare perusal of Sale Certificate (Ex.C-1) and Retail Invoice (Ex.C-2), it has been shown that the vehicle was under the Agreement of hire purchased/lease/hypothecation with Mahindra & Mahindra Financial Services Limited. Thus, there was no requirement on the part of the respondent to issued a cheque Ex.C-3 amounting to Rs.4,70,000/- in favour of the appellant/complainant i.e. M/s P.P. Automotive and the findings recorded by the learned trial Court in this regard are liable to be upheld. This fact also lends credibility to the case of the defence that Bhagwati Finance Company was an agent of Mahindra & Mahindra Financial Services Limited and the respondent had issued seven blank signed cheques to the said Finance Company and later on, the same were misused by the appellant.

9. In fact, the presumption mandated by Section 139 of the Act does not include the existence of a legally enforceable debt or liability. This presumption in the nature of a rebuttal presumption and it is always open to the accused to raise a defence, wherein the existence of a legally enforceable debt

2023:PHHC:057227

or liability can be contested. This has been held in a number of judgments that there can be no doubt that there is an initial presumption which favours the complainant. While Section 138 of the Act provides for a strong criminal remedy in relation to the dishonour of the cheques and the rebuttable presumption under Section 139 of the Act is a device to prevent undue delay in the course of litigation. However, the offence punishable under Section 138 of the Act can be better described as a regulatory offence since the bouncing of a cheque is largely in a nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. Even it is the settled position that when the accused has to rebut this presumption under Section 139 of the Act, the standard of proof for doing so is that of preponderance of probabilities. Consequently, 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 must fail.

10. Adverting to the facts of the present case, the cheque dated 26.03.2008 for a sum of Rs.4,70,000/- is shown to have been issued in favour of P.P. Automative, Karnal, whereas the Sale Certificate (Ex.C-1) and Retail Invoice (Ex.C-2), respectively, dated 19.10.2007, in favour of the appellant clearly show that the loan had been taken from Mahindra & Mahindra Financial Services Limited. Even the appellant/complainant could not lead any evidence to prove the connection between the two legal entities and the learned trial Court rightly held that the appellant had failed to prove on record that the cheque Ex.C-3 was issued by the respondent in discharge of legally enforceable debt or liability.

2023:PHHC:057227

11. Thus, the findings recorded by the learned trial Court are ordered to
be upheld and the appeal is, accordingly, dismissed.
12. Pending applications, if any, are also disposed off, accordingly.
13. The trial Court record be sent back.

18.04.2023
hemlata

(N.S.SHEKHAWAT)
JUDGE

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