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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-A-1107-MA-2018

Date of decision: 2nd August, 2023

Sanjeev Kumar

...Applicant(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Nipun Bhardwaj, Advocate for the applicant(s).
Mr. Rajiv Sidhu, Deputy Advocate General, Haryana.

AVNEESH JHINGAN, J (Oral):

1. This is an application for grant of leave to appeal against judgment of acquittal vide order dated 11th May, 2018.

2. The brief facts as set up by the complainant are that on 1st December, 2016, accused (Mukesh Kumar) borrowed a sum of ₹35,000/- as a friendly loan. The accused issued a cheque No. 077945 dated 3rd January, 2017 amounting to ₹35,000/- drawn on Syndicate Bank, Cheeka for repayment of loan. On presentation, the cheque was returned vide memo dated 4th January, 2017 with the remarks 'account closed'. The accused took a defence that he took a loan of ₹20,000/- from the complainant, however, he was paid amount of ₹17,000/- after deducting the interest. The loan was repaid and blank cheque given at the time of obtaining loan was misused. To prove the repayment of loan notebook bearing signature of the complainant on the entry was produced. It was further stated that no notice under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') was served. It is

further stated that accused is a resident of village Janetpur whereas the notice was sent to village Paharpur. In cross-examination complainant stated that he is also known by the name of Sanju. He is a shopkeeper whereas accused is a hawker, they have no business relationship and there was no family relationship between them. He was not filing income tax returns. He further stated that the loan was given in new currency notes.

3. The trial Court considered that the accused was successful in rebutting the presumptions under Sections 118 and 139 of the Act. The legal position was noted that the onus for rebuttal of presumptions is not as heavy on the accused as on the prosecution. It was further observed that the complainant failed to prove legally enforceable debt existing on the date of presentation of the cheque. It was taken into consideration that as per the complainant on 1st December, 2016 the loan was advanced in new currency notes whereas on 8th November, 2016 demonitisation of high currency notes was announced. The complainant apart from making a bald statment that the signatures on the note book were not of him, had made no efforts to examine the handwriting expert. The accused was acquitted.

4. Learned counsel for the applicant submits that the trial Court erred in acquitting the accused. It was not denied that the signatures on the cheque was of the accused.

5. The contention raised by the learned counsel for the applicant lacks merit. There cannot be dispute on the proposition that presumptions under Sections 118 and 139 of the Act is in favour of the holder of the cheque but it is rebuttable. The accused was successful in

Rs.20,000/- from the complainant, which was paid back and blank cheque obtained at the time of advancing loan was misused.

6. On failure of the applicant to discharge the onus for establishing the ingredients required under Section 138 of the Act, the trial Court rightly acquitted the accused.

7. The scope of interference is limited. The view taken by the trial Court is plausible, no legal or factual error, much less perversity has been pointed out in the impugned judgment. The conclusion arrived at by the trial court is a plausible one.

8. The application is dismissed.

9. Since the main application has been dismissed, pending application if any is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

2nd August, 2023
Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |