HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

CRM-A-11-MA-2016 (O&M)
Date of Decision: 01.05.2023

****

Panipat Hire Purchase and Leasing P.Ltd. ... Applicant

VS.

Bharat Bhushan ... Respondent

****

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

****

Present: Mr. Shiv Kumar, Advocate for the applicant

****

<u>Sandeep Moudgil, J.</u>

1. This application under Section 378(4) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 13.10.2015 passed by JMIC, Chandigarh (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, (in short, 'the NI Act').

2. A brief glance to the facts as can be zeroed down would read that the applicant-petitioner is a company incorporated under the Companies Act, 1956 and has been carrying on the business of financing. On 28.05.2012, the accused approached it qua loan of Rs. 40,000. It extended the loan of Rs. 40,000/-, in cash, to the accused repayable on 28.03.2013 alongwith interest @ 3% per month. The accused executed a pro-note-cum-receipt and also a memorandum of terms and conditions the said terms regarding the alleged loan transaction. Thereafter, when requested, the accused, in order to discharge his liability towards the said loan, issued cheque no. 693676 dated 25.05.2013 for Rs. 54,000/- drawn at Bank of India, Branch Kalka, Haryana. It presented the said cheque for encashment through its banker, however, the same was dishonoured vide memo dated 27.05.2013 with the remarks

"Insufficient Funds". It issued the legal notice dated 07.06.2013 but the accused did not respond to it which led to filing of the present complaint. However, the trial court vide judgment dated 13.10.2015 dismissed the said complaint.

3. Learned counsel for the applicant submits that the learned Trial Court has misdirected itself as per section 139 of the Act, the presumption is always available with the holder of the cheque which the accused- respondent has failed to rebut by leading any cogent evidence. It is also argued on behalf of the applicant the accused/respondent has neither adduced any evidence nor has been able to demolish the version of the complainant/petitioner, rather on asking of the accused/ respondent, the complainant/ appellant placed on record the account statement of the accused. He further asserted that the Trial Court has failed to appreciate the fact that the plea of the accused is that he issued the cheque in question as security for some earlier loan but no cogent and convincing evidence has been led to prove the same.

4. Learned counsel contended that the Trial Court has further failed to appreciate the fact that the accused respondent has not filed any suit or complaint for return of cheque. He also asserts that the fact that he did not raise any protest, goes to show that the plea taken by the accused-respondent is the result of an afterthought and just to avoid his liability in making the payment of the dishonoured cheque.

5. It is the further contention of learned counsel that mere denial by the accused/respondent or the oral suggestion is not sufficient to shift the burden on the applicant-petitioner on the strength that it is a well-settled law that when signatures on the cheque is admitted, it can be legally inferred that

the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability.

6. Further assertion made is that the Trial Court has failed to consider the fact that it is admitted case of the parties that accused had financial dealings with the complainant. It is not disputed that the cheque dated 25.5.2013 belonged to the accused and it bears his signatures. Admission of signatures on a document proves the document.

7. I have heard learned counsel for the applicant and gone through the case file.

8. Sections 138 and 139 of the said NI Act requires that the Court 'shall presume' the liability of the drawer of the cheque(s) for the amount for which the cheque(s) is drawn. It is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption has been established i.e. execution of cheque(s) by the accused. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. Such a presumption is a presumption of law as distinguished from a presumption of fact which describes provisions by which the court may presume a certain state of affairs.

9. Once execution of the cheque is proved/admitted, the presumptions u/s 118(a) and 139 of the said Act would arise that it is supported by a consideration. Such presumptions are rebuttable in nature and the accused can prove the non-existence of a consideration by raising a probable defence, and if the accused is proved to have discharged the initial

onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the complainant who will be obliged to prove it as a matter of fact and upon its failure to prove would dis-entitle him to the grant of relief on the basis of the negotiable instrument. It is settled proposition of law that the complainant must prove the guilt of an accused beyond all reasonable doubt, however, the standard of proof so as to prove defence on the part of an accused is 'preponderance of probabilities' and inference of preponderance of probabilities can be drawn not only from the materials brought on records by the parties but also by reference to the circumstances upon which he relies.

10. It is the case of the applicant that it is doing the business of financing. Its case is that it is a company registered with Reserve Bank of India as NBFC. As per the requirements of Reserve Bank of India, every NBFC is required to maintain certain books including books of accounts etc. in requisite form. The complainant has neither asserted nor produced any such requisite books of account to support its contentions. The complainant has produced cash book (Ex.C-x) a perusal of which clearly reflects that it is a computerized statement and not the kind of books of accounts maintained in regular course of business or as per the requirements of the Reserve Bank of India. Moreover, the cash book (Ex.C-x) appears to be a computer generated statement. Meaning thereby, the said statement is a unilateral document and not a mutually prepared and reconciled document.

11. In ***Anvar P.V. Vs. P.K. Basheer and others 2014 AIR (SCW) 5695***, the Supreme Court held that any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A,

can be proved only in accordance with the procedure prescribed under Section 65B.

12. In order to prove the cash book/statement (Ex.C-x), the complainant has examined Sh. Sanjeev Kochhar (Cw-1). However, he squarely failed to prove the required certification qua the cash book/statement (Ex.C-x) on record. It is highly improbable that the company registered with Reserve Bank of India as NBFC (the complainant) has advanced numerous loans against oral requests and has not been maintaining any books as required by Reserve Bank of India. It is also highly improbable that a company having numerous loan transactions has advanced the loan(s) without any written request/application from the proposed loanee's and that too without obtaining any security.

13. To support his contentions qua advancement of Rs. 40,000/-, the complainant heavily relied upon the pro-note-cum-receipt (Ex.C-2) and memorandum of terms and conditions (Ex.C-3). The accused is denying the execution of the aforesaid documents (Ex. C-2 and Ex. C-3) right from the beginning as he never executed the said pro-note and memorandum qua loan of Rs. 40,000 rather has issued the same, blank, qua alleged previous loan of Rs. 10,000/-, which he had already repaid. The complainant has nowhere stated about the date or the month or the year of issuance of the said cheque by the accused in his favour. He has also not stated even in his cross-examination qua the date of issuance and handing over of the cheque. It appears that the contents of the pro-note-cum-receipt as well as the said cheque were filled by Sh. Sanjeev Kochhar in his own handwriting. There is nothing on record which reflects that the alleged filling was consensual or

was in presence and authority of the accused. It has been already observed that execution of said pro-note-cum-receipt at the time of alleged advancement is highly improbable.

14. A distinction has to be drawn between a cheque issued as security and a cheque issued towards discharge of a liability to pay notwithstanding that the money is by way of security for due performance of the contract. A cheque given as security is not to be encashed in presenti, and it becomes enforceable only if any future obligation is not enforced as it is not tendered in discharge of a liability which has already accrued. Further, even if blank cheque has been given towards liability or even as security, when the liability is assessed and quantified, the same can be filled up and presented to the bank and the person who had drawn the same cannot avoid the criminal liability arising out of Section 138 of the said Act.

15. This Court cannot lose sight of the admitted fact on record that the date and amount column of the Cheque has been altered and the said alteration has not been authenticated by the drawer i.e. the accused. Meaning thereby, if the alteration, even material in nature, is consented by the parties or is done in furtherance of common intention of the parties, then it will not render the cheque void. The said principle of law has been reiterated by Andhra Pradesh High Court in ***A. Subba Reddy v. Neelapa Reddi, AIR 1966 Andhra Pradesh 267.***

16. It cannot be construed that the accused-respondent consented to the filling of the cheque or that it was in furtherance of common intention of the parties after having minutely scrutinize the evidence of complainant/petitioner CW-1 himself. In fact, the cheque (Ex.C-4) became

void as soon as the complainant filled its date and amount column without obtaining consent of the accused as the same act was not in furtherance of their common intention.

17. This Court is of the firm view that the possibility qua obtaining blank documents and cheque(s) by the complainant/petitioner at the time of alleged advancement of loan of Rs.10,000/- on 05.10.2011 and their subsequent filling by it cannot be ruled out rather appears to be highly probable. Hence, it is abundantly crystal clear on the basis of material that the accused has not issued the said cheque in discharge of his liability towards the said loan, rather issued the same blank, as security, at the time of advancement of alleged loan, if any.

18. In view of the above discussion, this Court is of the considered view that there is no infirmity, perversity and illegality in the judgment passed by the trial court.

19. As such the present application under Section 378(4) of CrPC, seeking leave to appeal, is dismissed.

01.05.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*