IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-21697-2023
in/and
CRM-21839-2018
in/and
CRM-A-1217-MA-2018
Date of Decision: 02.08.2023

M/S BHARAT RICE MILL …Applicant

Versus

M/S VIJAY KUMAR ASHOK KUMAR
THROUGH ITS PROPRIETOR ASHOK KUMAR …Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Keshav Gupta, Advocate
for the applicant.

HARSH BUNGER, J.

CRM-21697-2023

This is an application for recalling of order dated 10.04.2023, whereby, the application (***CRM-21839-2018***) was dismissed for non-prosecution.

For the reasons stated in the application, the same is allowed and order dated 10.04.2023 passed in application (***CRM-21839-2018***) is hereby recalled. ***CRM-21839-2018*** is restored to its original number and status.

Registry to carry out the necessary steps accordingly.

CRM-21839-2018

This is an application seeking condonation of delay of 23 days in filing the accompanying application for grant of leave to file appeal.

For the reasons mentioned in the application, the same is allowed and delay of 23 days in filing the accompanying application for grant of leave to file appeal is condoned.

Criminal Misc. Application stands disposed of accordingly.

CRM-A-1217-MA-2018

The instant application has been filed under Section 378 of the Code of Criminal Procedure, for grant of leave to appeal against impugned judgment dated 02.02.2018 passed by learned Judicial Magistrate Ist Class, Patiala, whereby, the criminal complaint filed by the applicant-complainant under Section 138 read with Section 420 of the Indian Penal Code, has been dismissed and the respondent has been acquitted of the charges framed against him.

2. Briefly, the applicant-complainant filed a complaint under Section 138 of the Negotiable Instruments Act (for short `N.I. Act') read with Section 420 of the Indian Penal Code (for short `IPC'), wherein it was alleged that the respondent-accused borrowed a sum of Rs.11,69,221/- from the applicant-complainant for business purposes and to discharge his liability, the respondent-accused issued following cheques in favour of the complainant :-

Cheque No.	***Dated***	***Amount***
847911	14.12.2016	Rs.1,69,221/-
847921	26.12.2015	Rs.5,00,000/-
847915	21.12.2015	Rs.2,50,000/-
847914	21.12.2015	Rs.2,50,000/-

All the afore-mentioned cheques were stated to be drawn on `State Bank of Patiala' with the assurance that the same would be honoured on presentation. However, upon presentation, the said cheque was returned back dishonoured vide Memo dated 01.01.2016 with remarks "*funds* *insufficient*". Upon this, the applicant-complainant issued a legal notice dated 05.01.2016, calling upon the respondent-accused to make the payment within stipulated period of 15 days. Upon failure of the respondent-accused to make the payment, a complaint under Section 138 of the N.I. Act read with Section 420 of the IPC was filed by the applicant-complainant.

3. On the basis of preliminary evidence, the respondent-accused was summoned to face trial under Section 138 of the Negotiable Instruments Act vide order dated 11.02.2016 and subsequently notice of accusation was also served upon him, to which, he pleaded not guilty and claimed trial.

4. In order to prove its case, the applicant-complainant stood into the witness box as CW1 and tendered the following documents :-

Affidavit	*Ex.CW1/A*
Original cheques	*Ex.C1 to Ex.C4*
Original memo	*Ex.C5*
Copy of legal notice	*Ex.C6*
Postal Receipt	*Ex.C7*
ITR 2015-16	*Ex.C8*
Balance Sheet	*Ex.C9*
ITR 2016-17	*Ex.C10*
Balance Sheet	*Ex.C11*

5. After the closure of evidence of applicant-complainant, statement of the respondent-accused under Section 313 of the Code of Criminal Procedure, was recorded, wherein, all the incriminating evidence was put to him, to which he pleaded innocence and false implication.

6. In the defence evidence, the respondent-accused tendered into evidence certified copy of documents from Ex. DW1/A to Ex.DW1/C and thereafter, closed his evidence by making a separate statement.

7. The case of the respondent-accused was that neither he borrowed any amount from the complainant nor cheque in question, was issued by him in discharge of any legally enforceable debt as in fact, the cheque in question, was handed over to the complainant when the firm of the accused namely M/s Vijay Kumar had dealing with the complainant. However, the said firm had been dissolved in the year-2012 and all the account has been settled. It is the case of the respondent-accused that the applicant-complainant misused the cheque by filing the present complaint as he was aware about the dissolution of the firm. The complainant failed to specify the date of demand of loan as well as date of advancement of loan.

8. Learned trial Court, after appreciating the evidence, acquitted the respondent-accused of the charges framed against him vide judgment dated 02.02.2018 and dismissed the complaint under Section 138 of the Negotiable Instruments Act. Accordingly, the present application seeking leave to appeal along with appeal has been filed before this Court.

9. Learned counsel for the applicant submits that the learned trial Court has completely misread the evidence on record. It is submitted that the dissolution of firm has no relevance to the case in hand and the respondent-accused had failed to rebut the presumption under Section 139 of the N.I. Act. Accordingly, it is submitted that the respondent-accused be punished for the offence under Section 138 of the N.I. Act.

10. I have heard learned counsel for the applicant and gone through the paper book as well as impugned judgment dated 02.02.2018 passed by learned Judicial Magistrate 1st Class, Patiala.

11. Here, it would be apposite to refer to few judicial pronouncements regarding the scope and parameters, in which, interference can be made in a judgment of acquittal.

12. In ***'Mrinal Das & others v. The State of Tripura, 2011(9) SCC 479'***, Hon'ble Supreme Court, after looking into many earlier judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

> *"An order of acquittal is to be interfered with only when there are "compelling and substantial reasons", for doing so. If the order is "clearly unreasonable", it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed."*

13. In the case of ***'Arulvelu v. State represented by the Public Prosecutor, 2009(4) RCR (Criminal) 638'***, the Hon'ble Supreme Court has observed as under:-

> *"39. In* ***Ghurey Lal v. State of Uttar Pradesh, (2008) 10 SCC 450****, a two Judge Bench of this Court of which one of us (Bhandari, J.)was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above :*
>
> > *1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court.*

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The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

40. This Court in a recently delivered judgment ***State of Rajasthan v. Naresh @ Ram Naresh, 2009(11) SCALE 699*** *again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused..."*

14. In ***'Allarakha K.Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748'***, Hon'ble Supreme Court held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

15. Coming to the case in hand, learned counsel for the applicant contended that the trial Court has completely misread the evidence;

however, learned counsel has failed to point out as to which evidence has been misread by trial court or which evidence has been wrongly considered by trial Court. Nothing has been pointed out as to which material evidence has not been considered by trial Court. As regards the submission of learned counsel for the applicant that dissolution of firm has no relevance and presumption under Section 139 of the N.I. Act has not been rebutted; suffice it to say that the cheques in question belong to the firm M/s Vijay Kumar Ashok Kumar and the said firm was dissolved on 01.04.2012. Now the cheques in question are :-

Cheque No.	***Dated***	***Amount***
847911	14.12.2016	Rs.1,69,221/-
847921	26.12.2015	Rs.5,00,000/-
847915	21.12.2015	Rs.2,50,000/-
847914	21.12.2015	Rs.2,50,000/-

A perusal of above chart would show that cheques in question belonging to the firm (which stood dissolved in 2012) are of the year 2015 and 2016. Further, the categoric stand of the respondent-accused is that he never borrowed any amount from the applicant and neither the cheques in question were issued in discharge of any legally enforceable debt. A perusal of impugned judgment would show that the applicant failed to prove the transaction on the basis of which presumption can be raised.

16. The learned trial Court, after appreciating the evidence on record, observed as under:-

> *"12. First and foremost contention of learned counsel for the defence is that cheque in question was never issued in favour of complainant to discharge legally*

enforceable debt. CW1 Mohinder Pal Gupta stated on oath through his affidavit exhibit CW1/A on the similar line as that of the complaint.

Accused has come forward with a specific plea that neither he borrowed any amount from the complainant nor cheque in question was issued in discharge of legally enforceable debt. In fact cheque in question was handed over to the complainant when his firm namely M/s Vijay Kumar Kumar had dealing with the complainant. This firm had been dissolved in the year 2012 and all the account has been settled. That complainant misused the cheque by filing the present complaint as he is aware about the dissolution of the firm. That complainant failed to specify the date of demand of loan as well as date of advancement of loan. To prove his version accused did not examined any witness however he tendered into evidence certified copy of documents from exhibit DW1/A to DW1/C. Before discussing the evidence available on record it is pertinent to mention here that mere admission of signature over cheque in question is not sufficient enough to raise the presumption under section 139 of the act. In order to raise the presumption it is incumbent on the part of the complainant to prove the transaction itself. Further, to rebut the presumption accused is not required to examine any witness and he can use the tool of cross- examination and the evidence brought on record by the complainant. In ***Rangappa v. Sri Mohan, 2010(3) R.C.R. (Criminal) 164 : 2010(3) R.C.R. (Civil) 197 : 2010(3) Recent Apex Judgments (R.A.J.) 415 : (2010) 11 SCC 441*** *this Court held that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though accused* *need not adduce his own evidence and can rely upon the material submitted by the complainant.*

Perusal of the record shows that is the cheque in question from exhibit C1 to exhibit C4 belongs to firm namely M/s Vijay Kumar Ashok Kumar. However, dissolution deed reflects that this firm had already been dissolved on 01/04/2012. If the liability of the accused is of personal nature, as alleged by the complainant then why the complainant had accepted the cheque of the partnership firm which had already been dissolved. This fact has not been explained by the complainant during the course of argument. Further, the present complaint has been filed against the accused in the capacity of sole proprietorship. Whereas, the same ought to be filed against the accused as a partner.

13. Further, accused relied upon exhibits C9 and exhibit C11 to reflect the liability of the accused. However the same is not admissible as the same is hit by the provision of section 65B of Indian evidence act. It is pertinent to mention here that neither in the complaint, affidavit nor in cross-examination the date of advancement has been mentioned. Therefore the entire version of the complainant is suffering from so many infirmities. It is pertinent to mention here that in the complaint friendly relationship has not been alleged. The purpose of the alleged advancement is business purpose. If there is no friendly relationship then why not at the time of alleged advancement any writing has been executed, which is very uncommon in the business community. Further at one place of his cross-examination the special power of attorney holder of that even stated that Ruchika did not have any transaction with the accused firm. It was held in ***2008 (1) RCR criminal 695 in case titled Krishna Janardan Bhat versus Dattatraya G. Hegde****, that where the complainant could not prove*

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that he had so much money to advance and there was no supporting documentary proof showing giving of advance the version of the accused that blank cheque came into the hand of the complainant during transaction and the complainant filled up the amount and misused the same should be believed. Further, from the perusal of the cross-examination it appears that there does not exist any friendly relationship so as to warrant the advancement of huge amount of Rs. 2 lakh/- without execution of any writing. It was held in ***2016 (5) RCR criminal 886 case titled Punit Kumar versus Mohan Lal*** *that where no reason was given by the complainant as to why amount of Rs. 60,000/- has been given by him without getting executed any security document and there is nothing on record to show any particular of loan than probable defence raised by the accused as to misuse of the cheque has been duly corroborated and presumption under section 139 has been duly rebutted by the accused. Thus, the overall evidence on record shows that accused succeeded in rebutting the presumption raised against him and the complainant failed to discharge his basic function of proving the fact of advancement on the basis of which presumption can be activated.*

14. In view of the aforesaid discussion, the complainant totally failed to prove the transaction of the alleged advancement. On the other hand accused succeeded in rebutting the presumption raised against him. Accordingly, accused is acquitted of the notice of accusation levelled against him. Compliance as required by section 437-A CPC be made immediately. File be consigned to record room after due compliance."

17. The perusal of the findings given by learned Magistrate shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law.

18. When the findings given by the trial Court are considered in the light of the legal position indicated above; no interference is called for; especially when the applicant-complainant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 02.02.2018 passed by learned Judicial Magistrate Ist Class, Patiala.

19. No other argument was raised.

20. In view of the above discussion, the instant application is bereft of any merit and the same is accordingly dismissed.

21. All pending application/s, if any, shall stand closed.

August 2nd, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No