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2023:PHHC:153568

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-A-1885-MA-2018

Date of Decision: November 23, 2023

M/S PINK CITY LOGISTICS AND SHIPPING SERVICES

.....Petitioner

Versus

M/S BEYOND IMAGINATIONS AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Puneet Kakkar, Advocate for the applicant-appellant.

Mr. Dishant Jindal, Advocate for

Mr. Ashwani Talwar, Advocate for respondents No. 1 and 2.

HARPREET SINGH BRAR, J. (ORAL)

1. The instant application under Section 378(4) CrPC is preferred against judgment of acquittal dated 02.05.2018 passed by Judicial Magistrate First Class, Panipat in complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter NI Act).

2. The facts, in brief, are that respondent-accused has been availing logistic services of the applicant-appellant-complainant, a private firm involved in business of shipping and transport. In August, 2013, the accused availed services of the complainant for delivery of its products to various destinations for which three invoices were duly generated for the amounts of Rs.85,502/-, Rs. 2,18,721/- and Rs.11,921/-. To discharge a part of its liability, the respondent-accused issued a cheque bearing No. 583162 dated 10.12.2013 for Rs. 1,15,288/- in favour of the applicant-appellant, under the signature of its

authorized representative- Jatin Kumar Rajpal, but the cheque was dishonoured by the banker (Oriental Bank of Commerce) with remarks- 'payment stopped by drawer.' The unpaid cheque was returned to the respondent on 26.02.2014 with the return memo and appellant served the respondent with a legal notice dated 25.03.2014. The respondent did not respond or make the payment causing the applicant-appellant to file a complaint on 16.04.2014.

3. On the basis of material available on record, the accused were summoned. All the incriminating evidence were put to the accused which they denied but admitted business dealings with the complainant as also receiving the legal notice.

4. Learned counsel for the applicant-appellant submits that both the parties are well acquainted with each other and have been in business together for a while. He claims that the respondents had mala fide intentions to cheat which is proven by the fact that the payment was stopped by them before issuance of the said cheque to the applicant-appellant.

5. Having heard the learned counsel for the parties and after perusing the record with their able assistance, I am of the view that the applicant-appellant has not been able to indicate any perversity in the impugned judgment.

6. The NI Act creates a presumption in favour of the prosecution in terms of Section 118 and 139. The same are reproduced as under:

Section 118: Presumptions as to negotiable instruments.

Until the contrary is proved, the following presumptions shall be made:--

(a) of consideration:-- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

Section 139: Presumption in favour of holder

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

7. It is no longer res integra that these presumptions are of a rebuttable nature. While, the onus to prove the guilt of the accused rests on the prosecution, once the facts required to form the basis of these presumptions in law exist, the Court is duty bound to draw the conclusion as stipulated by the statute. However, the accused is not barred from presenting evidence in his defence. The accused is only required to raise a probable defence casting a doubt on the existence of consideration which he can do by adducing direct evidence, circumstantial evidence or even on the basis of presumptions of law or fact. Furthermore, if he can explain the circumstances that would indicate his innocence, it is not mandatory for the accused to adduce evidence as the material available on record itself can be looked at from a new perspective. Thereafter, the burden shifts back to the prosecution to reply to and negate the rebuttal made by the accused. The standard

of proof in an offence under the NI Act is that of civil proceedings i.e preponderance of probabilities. Since the burden of proof on the accused is not as heavy as the prosecution, he is not required to disprove the entire prosecution case.

8. A two Judge bench of the Hon'ble Supreme Court in ***M.S. Narayana Menon alias Mani v. State of Kerala and Anr 2006(6) SCC 39***, speaking through Justice S.B. Sinha, observed as follows:

"45. In Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay [AIR 1961 Supreme Court 1316], Subba Rao, J., as the learned Chief Justice then was, held that while considering the question as to whether burden of proof in terms of Section 118 had been discharged or not, relevant evidence cannot be permitted to be withheld. If a relevant evidence is withheld, the court may draw a presumption to the effect that if the same was produced might have gone unfavourable to the plaintiff. Such a presumption was itself held to be sufficient to rebut the presumption arising under Section 118 of the Act stating:

"...Briefly stated, the burden of proof may be shifted by presumptions of law or fact, and presumptions of law or preassumptions of fact may be rebutted not only by direct or circumstantial evidence but also by presumptions of law or fact. We are not concerned here with irrebuttable presumptions of law."

9. A perusal of the record indicates that the respondent-accused has taken a specific defence that the payment of the cheque amount was made in cash albeit after issuance of the said cheque. In

his cross-examination, the complainant has duly admitted that he received the cheque amount in December 2013 and he presented the cheque for encashment in February 2014 even though he had already received the payment in cash. Therefore, the accused has been successful in rebutting the presumptions made in accordance with the scheme of the NI Act.

10. The legal proceedings under Section 138 NI Act are designed to provide redress in genuine cases rather than being intended as a means to extract payment in routine business transactions. The scope of application of the abovementioned penal provision is limited to the extent of failure to make payment within stipulated time towards discharging a legally enforceable debt. Undisputedly, the respondent-accused has already discharged his liability by making a cash payment in lieu of the cheque amount, making the complaint redundant.

11. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt.

Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses.

(See H.D. Sundara and others Vs. State of Karnataka, Criminal

Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of

H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

12. A two Judge Bench of Hon'ble Supreme Court in case of **Chandrappa (supra)** has laid down the parameters with regard to the power of appellate Court while dealing with an appeal against an order of acquittal. Speaking through Justice C.K. Thakker, the following was held:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available

to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

13. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

23.11.2023
tejwinder

(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>