IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-121-MA of 2017
Date of decision:25th September, 2023

Rai Singh

Applicant

Versus

Virender Singh

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Lajpat Sharma, Advocate for the applicant.

AVNEESH JHINGAN, J (Oral):

1. This is an application under Section 378(4) Cr.P.C. seeking leave to appeal against judgment of acquittal in Criminal Complaint No. 1518-II of 2014, under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

2. The brief facts are that the applicant gave an amount of Rs.8,55,000/- to the respondent-accused (a property dealer) for purchase of property in Urban Estate, Hissar. To repay the amount, cheque bearing No. 048551 dated 24.9.2010 amounting to Rs.8,55,000/- drawn on Punjab National Bank, Hissar (for short, 'PNB') was issued. On presentation, the cheque was returned vide memo dated 25.9.2010 with the remarks 'insufficient funds and payment stopped'. After serving legal notice and on failure of the respondent to pay the amount, the complaint was filed.

3. The respondent took a defence that the cheque in question was

mis-placed in August, 2006 and an application dated 17.8.2006 (Ex. D4) was made to the bank for stopping the payment. To substantiate the defence, Manager of PNB, Dabbar Chowk, Hissar was examined. On failure of the applicant to prove legally enforceable debt on the date of presentation of the cheque, the respondent was acquitted.

4. In order to prove the case, the complainant appeared herself as PW1 and examined PW2-Devi Lal. She tendered into evidence original cheque, original bank memo, legal notice, postal receipt and acknowledgement.

5. Learned counsel for the applicant submits that presumptions were in favour of the applicant. The testimony of PW2-Devi Lal was not considered in correct perspective.

6. Heard learned counsel for the applicant and perused the record.

7. The contention of learned counsel for the applicant lacks merit. The law is well-settled that the presumptions under Sections 118 and 139 of the Act in favour of the holder of the cheque are rebuttable. There is no dispute on the proposition that rebuttal of presumption is not to the extent of proving beyond reasonable doubt but has to be on principle of probabilities and preponderance. On rebuttal of the presumption, the onus shifts on the complainant. Reference in this regard be made to the decision of the Supreme Court in **Vijay v. Laxman and another, 2013 (2) JT 562.**

8. The respondent substantiated the defence by deposition of Bank Manager. It would be appropriate to note that the cheque was lost in 2006 and immediately an application (Ex. D4) was made to the bank, whereas as per the case set up, the cheque was handed over in 2010. *Albiet* at the stage of application under Section 378(4) Cr.P.C., there cannot be re-appreciation of evidence but it cannot be lost sight of that PW2-Devi Lal was found to be an interested witness being son-in-law of the applicant. This coupled with the fact that Devi Lal deposed that a receipt of amount was given by the respondent but the best evidence i.e. receipt was not produced by the applicant. No evidence was adduced to prove the payment of amount for purchase of property and that the cheque in question was issued for discharging the liability.

9. No case is made out for interference in the impugned judgment, as no legal or factual error much less perversity has been pointed out. The view taken by the trial court is plausible one.

10. The application is dismissed.

[AVNEESH JHINGAN]
JUDGE

25th September, 2023
mk

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