HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-A-1701-MA-2014

Date of Decision: 01.05.2023

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M/s Rakesh Finisher & Anr. ... Applicants

VS.

State of Haryana & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Bikram Chaudhary, Advocate for the applicant

Mr. Gagandeep S. Chhina, AAG Haryana

Mr. Vikas Chaudhary, Advocate for respondent No.2&3

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Sandeep Moudgil, J.

This application under Section 378(4) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 21.08.2014 passed by JMIC, Faridabad (in short, 'the trial court'), vide which the respondents No.2 & 3 have been acquitted in a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, (in short, 'the NI Act').

Brief facts are that Rakesh-the applicant filed a complaint under Section 138 of Negotiable Instruments Act (in short the NI Act) alleging that he is carrying on the business of Finishing of Garments on the above said address. The accused and the applicant are having business relationship since long time and the accused has given the garments for finishing during the period of April, 2010 to April, 2011 vide separate order/invoice/bill. According to several invoice till April 2011, an amount of Rs.2,53,455/- was found due against the accused. At the time of completing of job work of garments for finishing, the accused assured the applicant to pay the bill amount within a few days. The applicant had contacted many times, but the accused has extended the same on one pretext or the other. On 15.05.2011, the accused after admitting their liability and to discharge their liability have issued cheque No.260813 dt. 15.5.2011 for a sum of Rs.2,50,000/-, drawn on Syndicate Bank in favour of the applicant . The applicant presented the cheque in question for encashment but the same was returned back as unpaid with remarks 'Insufficient Funds' vide bank memo dt. 20.08.2011. The applicant got issued a legal notice dt. 15.9.2011 but accused failed to make the payment of the cheque. Hence, a complaint was filed.

The trial court vide judgment dated 21.08.2014 dismissed the complaint since the applicant failed to prove his case and as such the respondents/accused were dismissed of charges framed against them.

Learned counsel for the petitioner argued that the case of the applicant is duly proved. All the necessary ingredients to constitute the offence under Section 138 of N.I. Act are duly proved. All the statutory requirements have been complied with. The applicant has led clear and cogent evidence fulfilling all the ingredients constituting the offence punishable under Section 138 of N.I. Act. Thus, the case of applicant stands duly proved and hence accused is liable to be convicted for the offence U/s: 138 of N.I. Act.

Learned counsel further contended that respondents No.2&3 were summoned and thereafter on commencement of the trial, the applicant tendered into documents giving the details of the debts of the accused person. The accused persons did not lead any evidence and trial court vide impugned judgment has wrongly and erroneously acquitted the accused persons without considering the fact that the accused persons have not even denied the signature on the cheque and has taken a plea that the said cheque was issued for security purposes.

It is further averred that in view of Section 139 of NI Act, there is a presumption in favour of the holder of the cheque that the cheque in question has been issued in relation to a debt for legal liability and the said presumption is rebuttable and in the present case, the accused persons have not rebutted the presumption by leading any cogent evidence. Reliance has been placed on (i) **Sumeti Vij vs. M/s Paramount Tech Fab Industries, Crl.Appeal No.292 of 2021** decided on 09.03.2021; and (ii) **Jain P. Jose vs. Santosh & Anr. 2022 Livelaw (SC) 979**.

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

In order to bring home the guilt of the accused, the applicant is duty bound to prove the ingredients, *inter alia*, viz. a person must have drawn a cheque and such cheque must have been drawn on an account maintained by such person with a bank. As per the applicant 's version, the accused has issued the cheque in question in discharge of his liability. Whereas on the other hand, as per it reveals that the respondents have denied having issued any cheque and the cheque in question has been misused and that no liability exists. Moreover, the bills and ledger account are fabricated.

As per the section 139 of the N.I. Act, there is a presumption in favour of the holder of a cheque that the same has been issued in discharge of any debt or any other liability. However, there is no presumption that there exists legally recoverable debt. In the case titled **Krishna Janardhan Bhat v. Dattatraya G. Hegde, 2008(4) SCC 54**, the Supreme Court held that an accused, for discharging the burden of proof placed upon him under a statute, need not examine himself. He may discharge his burden on the basis of the materials already brought on records. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is preponderance of probabilities.

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. A statutory presumption has an evidentiary value. The question as to whether the presumption whether stood rebutted or not, must, therefore, be determined keeping in view the other evidences on record. For the said purpose, stepping into the witness box by the accused is not imperative. In a case of this nature, where the chances of false implication cannot be ruled out, the background fact and the conduct of the parties together with their legal requirements are required to be taken into consideration as has been held so by the Supreme Court in **Bharat Barrel & Drum Manufacturing Company v. Amin Chand Payrelal, 1999(2) RCR(Civil) 615** and **Uttam Ram vs. Devinder Singh Hudan & Anr. 2019(4) LH(SC) 2905**,

In the present case, the applicant has alleged that cheque in question has been issued by the respondent in order to discharge his liability accruing from various bills which are Ex.C1 to Ex.C30. On the other hand, the accused denies any kind of liability. The accused version is that he had handed over a blank signed cheque to the applicant as the latter required the same for procuring business orders from other companies. Accused has also alleged that these bills are forged and fabricated ones.

The bills Ex.C1 to Ex.C31, on a closer perusal, show various discrepancies. There are various bills of same date issued consecutively. Further, to support these bills the applicant has placed on record ledger account Ex.C31. This document cannot be read into evidence. Firstly, for the reason that it is a self generated document and secondly it does not fulfill the requirements of being called a ledger account. Loose sheets of papers can by no means of imagination be termed as account books. In ***CBI v. V.C. Shukla and others (1998) 3 SCC 410*** it has been held that the such loose sheets of papers cannot be a book for the purposes of Section 34 of Indian Evidence Act, 1872. Moreover, this document is also not a computer/system generated document as there is no such description thereon. Further, it neither bears the signature of the person who created it nor it is attested by the accounts department of the applicant.

There is another important fact to be taken into consideration i.e. whether or not the material mentioned in the bills was actually supplied to the accused? First of all we must take note of statement of applicant during cross-examination, wherein he has stated that he has never received a work order from M/s. B.L.B. Fashion. This statement alone goes to shake the very root of the complaint's case and supports his version. However, as far as receiving of the material is concerned, the applicant had deposed that accused's accountant Devender had received the material on behalf of the accused. The evidence of Devender was never recorded as his presence could not be procured and finally the applicant closed his evidence in the case. Thus, the fact that the material was received by the accountant Sh.Devender working with M/s. B.L.B. remains not proved.

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 and 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*