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

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**CRM-A-324-MA-2017**

**Date of Decision: 17.01.2023**

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Kanchan Bala ... Applicant

VS.

Parminder Kaur ... Respondent

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**CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL**

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Present: Mr. Krishan Sehajpal, Advocate for the applicant

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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 03.12.2016 passed by JMIC, Jalandhar (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'), on the ground that the applicant has failed to prove his case beyond the shadow of reasonable doubt.

Brief facts of the case are that respondent is alleged to have taken a loan of Rs.1,50,000/- from the applicant and in order to discharge debt liability, she issued cheque bearing No.246362 dated 12.09.2014 for a sum of Rs.1,50,000/- in favour of the applicant. But the same, on presentation to the Bank, was returned dishonored vide memo dated 20.09.2014 with remarks "Funds Insufficient". The applicant got issued a legal notice dated 27.09.2013 but the respondent despite service failed to make the payment of the dishonored cheque within the stipulated period.

Hence, the complaint under Section 138 of the NI Act was filed before the JMIC, Jalandhar which was dismissed vide impugned judgment dated 03.12.2016.

Learned counsel for the applicant contended that there is no denial by the respondent regarding handing over of cheque in question to the applicant, rather, admitted that she had earlier taken a loan of Rs.57,000/- from applicant and cheque in question was given as a security. Therefore, the presumption under Section 118 and 139 of NI Act lies in favour of the applicant who has been able to prove his case beyond reasonable doubt.

It is further urged that the trial court has erroneously ignored the fact that the cheque Ex.C1, Memo Ex.C2, legal notice Ex.C3, Postal receipts Ex.C4 and acknowledgment Ex.C5 were proved on record and in the light of such aspects, it was incumbent upon the respondent to prove that loan was never taken by her. It is further averred that much reliance could not been placed on the police record which is not proved as per Indian Evidence Act as the original of the same were not proved on record.

Having heard ld.counsel for the applicant and going through the case file, this Court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

The trial court rightly observed that the presumption, as provided by law, is always in favour of the holder of cheque, unless the same is rebutted or the case of applicant is so weak that it does not fit in the definition of beyond reasonable doubt at the yardstick of criminal jurisprudence since the presumption of law is not always absolute and is rebuttable being based on the preponderance of probabilities.

Apparently, there is no mention of date of availing of the loan facility by the respondent . The base date is to be taken from 12.09.2014 and it is to be seen that whether on said date, there was any legally enforceable debt or liability of respondent towards applicant. During her cross-examination, applicant clearly acknowledged that on 02.08.2014, respondent gave an application to the SHO, Divn. No.1 and on 09.10.2014 to the Commissioner of Police, Jalandhar. D.W.-3 C-II Sukhwinder Singh brought the record regarding application dated 02.08.2014 moved by respondent to the SHO P.S. Divn.No.1, Jalandhar. The relevant record entry in the register Ex.DW-3/1 coupled with Ex.D.1, shows that the respondent got Rs.57,000/- as loan from applicant @ 10% interest, installments of which are duly paid by her and total amount of Rs.2,50,000/- stood paid, but said Kanchan Bala is not returning her cheque bearing No.246362 of Punjab National Bank, which was given to her as security. The said stand was also supported by the testimony of D.W.2 HC Pal Singh, who proved the enquiry conducted by the Commissioner of Police and the report of Mrs.Amneet Kondal, IPS Asstt. Commissioner of Police dated 13.11.2014 as Ex.D.W.2/7, which also reflects that cheque in question was stated to be given as security cheque.

The onus, therefore, was rightly shifted on the applicant whether or not there was any legally enforceable debt or liability of respondent towards the applicant. Had there been any such liability qua the amount in question, then definitely applicant would have relied upon some of the documents to corroborate her stand but no documents like income tax returns bank account statement etc. or any other documents were produced in evidence by her.

The trial court rightly observed that the date of cheque i.e. 12.09.2014 is to be taken as date of computing time, if there was any legally enforceable liability of respondent towards the applicant which makes it abundantly clear that there was no legally enforceable debt or liability of respondent towards the applicant. Rather, the applicant misused the security cheque with a motive to secure the conviction of respondent on the basis of presumption of law, to which she has failed. It is well settled that whenever there is any doubt regarding the version of applicant then benefit of doubt is to be extended to the respondent.

Such view of this Court is also supported by ***Krishna Janardhan Bhat vs. Dattatraya G. Hegde 2008(1) RCR (Crl.) 695*** wherein the Supreme Court relied upon ***Narender Singh & Anr. v. State of M.P. (2004) 10 SCC 699, Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Anr. (2005) 5 SCC 294*** and ***Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70*** to hold that the presumption of innocence is a human right. While referring to Article 6(2) of the *European Convention on Human Rights* which provided that "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law", the Supreme Court further held as under:-

> *"Although India is not bound by the aforementioned Convention and as such it may not be necessary like the countries forming European countries to bring common law into land with the Convention, a balancing of the accused rights and the interest of the society is required to be taken into consideration. In India, however, subject to the statutory interdicts, the said principle forms the basis of criminal jurisprudence. For the*

*aforementioned purpose the nature of the offence, seriousness as also gravity thereof may be taken into consideration. The courts must be on guard to see that merely on the application of presumption as contemplated under Section 139 of the Negotiable Instruments Act, the same may not lead to injustice or mistaken conviction. It is for the aforementioned reasons that we have taken into consideration the decisions operating in the field where the difficulty of proving a negative has been emphasized. It is not suggested that a negative can never be proved but there are cases where such difficulties are faced by the accused e.g., honest and reasonable mistake of fact. In a recent Article "The Presumption of Innocence and Reverse Burdens : A Balancing Duty" published in [2007] C.L.J. (March Part) 142, it has been stated :-*

> *In determining whether a reverse burden is compatible with the presumption of innocence regard should also be had to the pragmatics of proof. How difficult would it be for the prosecution to prove guilt without the reverse burden? How easily could an innocent defendant discharge the reverse burden? But courts will not allow these pragmatic considerations to override the legitimate rights of the defendant. Pragmatism will have greater sway where the reverse burden would not pose the risk of great injustice where the offence is not too serious or the reverse burden only concerns a matter incidental to guilt. And greater weight will be given to prosecutorial efficiency in the regulatory environment.*

*34. We are not oblivious of the fact that the said provision has been inserted to regulate the growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters and to safeguard the faith of the creditor in the drawer of the cheque which is essential to the economic life of a developing country like India.*

*This, however, shall not mean that the courts shall put a blind eye to the ground realities. Statute mandates raising of presumption but it stops at that. It does not say how presumption drawn should be held to have rebutted. Other important principles of legal jurisprudence, namely presumption of innocence as human rights and the doctrine of reverse burden introduced by Section 139 should be delicately balanced. Such balancing acts, indisputably would largely depend upon the factual matrix of each case, the materials brought on record and having regard to legal principles governing the same."*

In the light of the above discussion, this Court has no hesitation to hold that there is no infirmity, perversity and illegality for any interference with the judgment passed by the trial court and as such the present application under Section 378(4) of CrPC, seeking leave to appeal, is devoid of any merit.

Accordingly, it stands dismissed.

17.01.2023
*V.Vishal*

**(Sandeep Moudgil)**
**Judge**

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