234

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-A-541-2022 (O&M) in/and
CRA-AS-97-2023
Date of Decision: 23.02.2023

Kuldeep Singh

..... Applicant/Appellant

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Satyawan Singh Nain, Advocate
for the applicant/appellant.

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HARSH BUNGER J.

1. ***CRM-A-541-2022*** has been filed under Section 378(4) read with Section 482 of the Code of Criminal Procedure for grant of leave to appeal against the impugned judgment dated 10.03.2022 passed by the Court of Judicial Magistrate Ist Class, Gurugram, whereby the criminal complaint filed by the applicant/complainant has been dismissed and respondent No.2 (Vishal Kataria) has been acquitted of the charges framed against him.

2. Briefly, the applicant/complainant filed a complaint being NACT No.16990 of 2017 dated 26.10.2017, under Section 138/142 of the Negotiable Instruments Act, 1881 against respondent No.2, alleging that on account of repayment of a friendly loan, respondent No.2 had issued a cheque bearing No.179632 dated 10.08.2017 amounting to Rs.2,50,000/- from his bank account drawn at Axis Bank in favour of the

applicant/complainant and had assured that there are sufficient funds in his bank account and the said cheque will be honoured at the time of its presentation, however, when the said cheque was presented by the applicant/complainant, the same was dishonored with the remarks 'funds insufficient' vide Memo dated 01.09.2017. Thereafter, the applicant/complainant served a legal notice upon respondent No.2 on 28.09.2017 but the payment was not made by respondent No.2, accordingly, the aforesaid complaint was filed by the applicant/complainant against respondent No.2.

3. After the preliminary evidence, the Court of Judicial Magistrate Ist Class, Gurugram summoned respondent No.2/accused and thereafter, a notice of accusation under Section 138 of the Negotiable Instruments Act was served upon respondent No.2/accused on 06.01.2020, to which he pleaded not guilty and claimed trial.

4. In order to prove the guilt of respondent No.2/accused, the complainant examined himself as CW-1 and tendered the following documents as evidence:-

Sr. No.	***Exhibits***	***Documents***
1.	*Ex.P1*	*Original Cheque*
2.	*Ex.P2*	*Return Memo dated 10.08.2017*
3.	*Ex.P3*	*Postal receipts*
4.	*Ex.P4*	*Legal Notice*
5.	*Ex.CW1/B*	*Copy of Passbook*
6.	*Mark A*	*Income Tax Return*

5. Thereafter, the statement of respondent No.2/accused was recorded under Section 313 of the Code of Criminal Procedure and all the incriminating facts and circumstances were put to him, however, he pleaded

complete innocence and false implication. A categorical stand was taken that respondent No.2/accused had given the cheque to the applicant/complainant, which bears his signature, however, he had not filled the rest of contents and handed over the blank cheque to the applicant/complainant. It was stated that respondent No.2/accused had taken a loan of Rs.1,00,000/- from the applicant/complainant in the month of January, 2017, however, he had returned the same as it was his legal liability towards the applicant/complainant. It was also stated that respondent No.2/accused had requested the applicant/complainant to return the aforesaid blank cheque as he had already paid the amount, however, the applicant/complainant kept on delaying the issue by assuring that the cheque was in safe custody and respondent No.2/accused trusted the applicant/complainant, since they being the neighbors, however, the aforesaid blank cheque was misused by the applicant/complainant.

6. After appreciating the evidence on record, the Court of Judicial Magistrate Ist Class, Gurugram dismissed the complaint being NACT No.16990 of 2017 dated 26.10.2017 filed by the applicant/complainant, vide judgment dated 10.03.2022 and consequently acquitted respondent No.2/accused of the charges framed against him. Accordingly, the present application for grant of leave to appeal has been filed by the applicant.

7. In the backdrop of aforementioned facts and circumstances, the application ***CRM-A-541-2022*** for leave to appeal is allowed, whereupon, the appeal is numbered as ***CRA-AS-97-2023***.

8. I have heard learned counsel for the appellant and gone through the impugned judgment dated 10.03.2022 passed by the Court of Judicial Magistrate Ist Class, Gurugram.

9. 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.

10. In ***"Mrinal Das and others Vs. The State of Tirpura", 2011(9) S.C.C. 479***, the 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.*"

11. In ***"Allarakha K. Mansuri Vs. State of Gujarat", 2002(1) R.C.R. (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.

12. Coming to the case in hand, the trial Court, after considering the rival contentions of the parties, the trial Court, framed the following issues for determination:-

> "*1. Whether the complainant has been able to raise the presumption under Section 139 of the Act.*
> *2. If the above issue is affirmative, then whether the accused has been able to rebut the Presumption raised under section 139 of the Act, by raising probable defence in his favour.*"

13. Thereafter, appreciating the material/evidence available on

record, the trial Court returned the following findings on the aforementioned issues of determination:-

> *"**1.1** The scope of the inquiry into the offence under Section 138 of the Act is restricted to the facts, whether the cheque in question was drawn by the accused within the prescribed period for the discharge of his legal liability existing on the date which the cheque bears and the said cheque has been returned unpaid by the bank as dishonored. It is pertinent to mention herein, that the dishonour of the cheque in question is not in dispute and the same has been duly proved by bringing on record the bank memo Ex.C2 from which it is evident that the cheque when it was presented in the bank for encashment was got dishonoured. Moreover, there is specific admission by the accused in his plea of defence, to the effect, he had signed and delivered blank cheque to the complainant, in lieu of loan amounting to Rs.1,00,000/-.*
>
> ***1.2** Therefore, the statutory presumptions under Section 118 and 139 of the Act shall be raised against the accused, that the cheque was issued for consideration towards the discharge of legally enforceable and debt.*
>
> ***2.1** Thus, it settled principle of law that the presumption to be drawn under section 118 and 139 of the Act, can be rebutted not only through the direct evidence of the accused, but also from the material on record and also by reference to the circumstances upon which the accused relies. It is absolutely legal & permissible for the accused to raise probable defence from the evidence and deposition of the complainant. The standard of proof is essentially that of preponderance of probabilities and not proof beyond reasonable doubt.*
>
> ***2.2** Adverting to the facts of the present case, the accused has refuted the claim of the complainant on several grounds, primarily, that the complainant had advanced sum of Rs.1,00,000/- to the accused and has filed false & fabricated*

case against the accused, misusing the cheque of the accused. In the instant case, it is proved undisputedly that there was transaction between the parties as they were neighbours, but the complainant had to prove existing liability of Rs.2,50,000/-, which was advanced by him to the accused, specifically when the accused has categorically raised plea that he took only Rs.1,00,000/- and the same fact gains strength from the Passbook entry CW1/B of the complainant.

2.3 *For better appreciation, the relevant portion of the deposition of the complainant in his cross-examination, is required to be reproduced. It is deposed, that he does not know whether he has mentioned in the complaint, as to when did the accused demanded money from him. He does not know for what purpose the accused took money from him. He did not get mentioned in his complaint, that from where the cheque amount of Rs.2,50,000/- was arranged by him. H efiles ITR. In his ITR he has mentioned about the amount of Rs.1,00,000/- which was transferred to the account of the accused through cheque. Remaining Rs.1,50,000/- was paid in cash, therefore the said amount was not shown in ITR. He did not get mentioned in his complaint, that when the said amount has to be returned. While advancing the accused, no writing/receipt was made. He did not get mentioned in his complaint, the date on which the cheque was received by him.*

2.4 *Bare perusal of pleadings as well as affidavit filed on behalf of the complainant reveals, that no specific purpose, particular date and time has been mentioned on which he had advanced money to the accused and the accused gave the disputed cheque to him. It is highly improbable, unnatural and unbelievable that an amount of Rs.2,50,000/- is advanced to a neighbour without obtaining any receipt/promissory note in writing, taking any security or making any entry to this effect. The complainant in his cross-examination has categorically deposed, that he has not got mentioned in his* *complaint regarding the source from which the alleged amount of Rs.2,50,000/- was given. No witness was present when the said amount was advanced to the accused.*

2.5 *Another ground whereby the claim of complainant has been rightly assailed by the accused, is that the accused has not shown the loan of Rs.2,50,000/- advanced to the accused in his ITR, but has mentioned amount of Rs.1,00,000/- only as the same was transferred through his bank and the remaining Rs.1,50,000/- was paid in cash. There is specific deposition in cross-examination of the complainant to this effect.*

2.6 *Thus, the complainant had failed to prove that amount of Rs.2,50,000/- was advanced to the accused, though he has successfully proved that an amount of Rs.1,00,000/- was transferred from his account to the accused. Thus, the existing liability is less than the cheque amount. It is settled proposition of law, that if the accused succeeds in proving that his liability is less than the amount claimed in the cheque, Seciton 138 N.I. Act is not attracted.*

Conclusion:

As a sequel to the above discussed settled principle of law and in view of the facts and circumstances, this Court is of the considered view that the accused has been duly able to rebut the presumption by the deposition and evidences of the complainant itself and raise probable defence in his favour. It can be concluded that cheque Ex.C1 amounting to Rs.2,50,000/- was not issued by the accused, in discharge of any legal debt and lawful liability, as it was adjuratory on the complainant to stand on his own legs and to further withstand the litmus test of cross-examination, but in the present case the complainant has miserably failed on both the fronts, as there is not even a single receipt/writing/security document which could prove the outstanding amount against the accused. Undoubtedly, there was transaction between the complainant and the accused, but the complainant had failed *to prove that such transaction was amounting to Rs.2,50,000/-. Hence, the complainant has failed to prove his case by leading cogent & convincing evidence and the accused has successfully been able to rebut the presumption raised under Section 138 of the Act and to raise probable defence in his favour. Therefore, the accused deserved acquittal.*

Before parting with the judgment, this Court observes that as the complainant has been successful in proving liability of the accused to the tune of Rs.1,00,000/- and the accused has failed to lead any evidence, except his bald statement that the same has been repaid, the complainant shall be within his right to seek recovery of the same from the accused, subject to law of limitation, as per law."

14. The perusal of 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. Appellant/complainant had miserably failed to show any error of law or on facts on the basis of which interference can be made by this Court in the judgment under challenge.

15. When the findings given by the trial Court are considered in the light of legal position indicated above; no interference is called for; especially when the appellant/complainant has failed to point out any substantial or compelling reasons for interfering in the impugned judgment dated 10.03.2022 passed by the Court of Judicial Magistrate Ist Class, Gurugram.

16. No other argument was raised.

17. In view of the above discussion, the instant appeal is bereft of any merit and the same is accordingly dismissed. Judgment dated

10.03.2022 passed by the Court of Judicial Magistrate Ist Class, Gurugram is upheld.

18. All pending application(s), if any, shall also stand closed.

23.02.2023 **(HARSH BUNGER)**
Apurva **JUDGE**

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