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2023:PHHC: 127280

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

**CRR-2125-2015
DECIDED ON: 17.04.2023**

RAJEEV KUMAR

.....PETITIONER

VERSUS

NISHAN SINGH

.....RESPONDENT

AND

2023:PHHC: 127286

2. CRR-2126-2015

RAJEEV KUMAR

.....PETITIONER

VERSUS

NISHAN SINGH

.....RESPONDENT

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. D.P Soni, Advocate
for the petitioner.

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SANDEEP MOUDGIL, J (ORAL)

Vide this common order, this Court intends to dispose of both the aforesaid revision petitions bearing No. CRR-2125-2015 and CRR-2126-2015, as common question is involved in both the petitions.

The instant revision petition under Section 401 Cr.P.C is directed against order dated 13.01.2015 passed by Additional Sessions Judge, Fazilka dismissing the appeal and acquitting the accused / respondent therein of the charges framed against him under Section 138 of the Negotiable Instruments Act.

Factual matrix leading to the filing of present petition are that complainant/petitioner Rajeev Kumar being the sole proprietor of concern M/s Moham Lal & Sons was doing the business of commission agents at Abohar and accused/ respondent was having and running current account with the complainant firm and used to obtain amount for his transactions. Both of them did joint work until 2005-2006 the account of the respondent with the complainant firm was closed in the year 2006 as respondent had started his commercial dealings through some other firm. Accused/ respondent issued complainant a cheque bearing no. 0115105 dated 28.07.2010 for Rs. 50,000/-in discharge of his liability, but the same got dishonored with the remarks "funds insufficient " and the cheque was returned vide Memo dated 29.07.2010. therefore a legal notice dated 12.08.2010 was issued and respondent failed to make the required payment.

Learned counsel for the petitioner contends that the respondent has admitted the signatures on the cheque but has denied the fact that the cheque was issued for the discharge of any liability. He further submits that the trial court has failed to consider the fact that no burden of proof lies upon the petitioner once the cheque gets dishonored rather shifts on the accused to prove that he cheque was not issued for the discharge of any liability.

I have heard learned counsel for the petitioner and gone through the record.

The respondent in his statement under section 313 CrPC, 1973 denied the incriminating materials put by the petitioner, however admitted the fact that the cheque in question bears his signature and further submits that complainant/petitioner has admitted in the present case that the accused/respondent had not borrowed any amount from the complainant firm after the financial year 2005-2006. The cheque in question is dated 29.07.2010. Had there been any debt or liability pertaining to the commission works between petitioner/complainant and respondent /accused. The cheque would have been issued at that very instance and not after elapse of 4 year which doubts the case of petitioner and the same being time barred debt. Any debt that is to be recovered under section 138 should be relating to any discharge, in whole or in part, of any debt or other liability and not of any other nature. Petitioner was thus under legal obligation to prove that the cheque was issued for discharge of legal liability. However it has been admitted by petitioner that he had no links pertaining to commission works with the respondent after the year 2005-2006 and the same cheque was issued in the year 2010 without there being any transactions between the petitioner and respondent. Then how can cheque in question stood delivered to the petitioner on 29.07.2010. Further if any amount is to be recovered the limitation period is of 3 years after which the same becomes time barred debt. In present case as contended by petitioner the cheque was issued on 29.07.2010 by the respondent for discharging his liability which was due to him for the year 2005-2006. However the same could have been recovered till 31.03.2009. i.e within three years from financial year 2005-2006.and not after that. Perusal of file reveals that petitioner has not lead any evidence to prove that the cheque issued by respondent was in lieu of any debt or liability.

In this connection, we may usefully refer to a judgment of this Court in ***A.V. Murthy v. B.S. Nagabasavanna, 2002 (1) RCR (Criminal) 745 : (2002) 2 SCC 642*** where the accused had alleged that the cheque issued by him in favour of the complainant in respect of sum advanced to the accused by the complainant four years ago was dishonoured by the bank for the reasons "account closed". The Magistrate had issued summons to the accused. The Sessions Court quashed the proceedings on the ground that the alleged debt was barred by limitation at the time of issuance of cheque and, therefore, there was no legally enforceable debt or liability against the accused under the Explanation to Section 138 of the NI Act and, therefore, the complaint was not maintainable. While dealing with the challenge to this order, this Court observed that under Section 118 of the NI Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. This Court further observed that Section 139 of the NI Act specifically notes that 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 of the NI Act for discharge, in whole or in part, of any debt or other liability. This Court further observed that under sub-Section (3) of Section 25 of the Contract Act, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Referring to the facts before it, this Court observed that the complainant therein had submitted his balance sheet, prepared for every year subsequent to the loan advanced by the complainant and had shown the amount as deposits from friends. This Court noticed that the relevant balance sheet is also produced in the Court. This Court observed that if the amount borrowed by the accused therein is shown in the balance sheet, it may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made.

In ***Rangappa v. Sri Mohan, 2010(3) RCR (Criminal) 164: 2010(3) RCR (Civil) 197: 2010(3) Recent Apex Judgments (R.A.J.) 415: (2010) 11 SCC 441***, the legal question before this Court pertained to the proper interpretation of Section 139 of the NI Act which shifts the burden of proof on to the accused in cheque bouncing cases. This Court observed that the presumption mandated by Section 139 of the NI Act includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. This Court further observed that Section 139 of the NI Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. This Court clarified that the reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. This Court, then, explained the manner in which this statutory presumption can be rebutted. Thus, in cheque bouncing cases, the initial presumption incorporated in Section 139 of the NI Act favours the complainant and the accused can rebut the said presumption and discharge the reverse onus by adducing evidence.

It is a settled law as held in "***C.Antony v. K.G.Raghavan Nair, 2002 (4) RCR (Criminal) 750***" that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

In view of the above judgements this court is of the considered view that once the respondent has rebutted his presumption of guilt under section 139 Negotiable Instruments Act the onus shifts on the complainant to prove that the cheque was issued in discharge of debt or any liability due towards respondent to which petitioner has failed to lead any cogent material. Further since the cheque has been issued after the prescribed period for limitation that has already expired the respondent cannot be held liable for an offence punishable under section 138 of the Negotiable Instruments Act.

On perusal of the judgment passed by Ld. Additional Session Judge dated 13.01.2015 this Court is of the considered view that the said judgment is based upon the proper appreciation of the evidence led by the parties. The ground of acquittal, as has been culled out by the trial Court, cannot be said to be faulty, requiring any interference by this Court. The allegations have been found to be not proved beyond reasonable doubt by the evidence which has been led by the prosecution and, therefore, the benefit of doubt has rightly been granted to the accused-respondent.

Accordingly, revision petition dismissed.

Dismissed.

(SANDEEP MOUDGIL)
JUDGE

17.04.2023
Sham

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*