243

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1442-2019
Date of decision: 18th October, 2023

Harminder Arora

...Applicant(s)

Versus

Amarjeet Singh @ Jeeta

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ramesh Kumar Jha, Advocate for the applicant/appellant.

***

AVNEESH JHINGAN, J (Oral):

1. This is an application under Section 378(4) for grant of leave to appeal against judgment of acquittal under Sections 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

2. The case set up by the complainant was that the respondent took a loan of ₹50,000/- on 20th October, 2017 for business purposes and to repay it issued cheque bearing No. 775628 dated 5th December, 2017.

3. On presentation, the cheque was dishonoured vide memo dated 28th February, 2018 with the remarks 'insufficient funds'. After serving the notice, on failure of the respondent to repay the cheque amount complaint was filed. The complainant himself stepped into witness box to support the complaint and placed on record original cheque, return memo, registered postal cover, copy of the legal notice and postal receipts.

4. The defence taken by the respondent was that the cheque given for securing an amount of ₹20,000/- was misused. The amount

was repaid, but the cheque was not returned. It was further stated that applicant was a money lender and had filed number of cases of similar nature. To substantiate the defence taken, seven defence witnesses were examined.

5. The Court acquitted the respondent considering that on successful rebuttal of the presumptions by the respondent, the applicant failed to prove existence of enforceable debt on the date of presentation of the cheque. Hence, the present application.

5. Learned counsel for the applicant submits that presumptions under Section 118 and 139 of the Act were in favour of the applicant. Contention is that the evidence was not appreciated in proper perspective.

6. The contentions raised lacks merit. It is settled law that the presumptions in favour of the holder of cheque are rebuttable and the onus is not as heavy as on the prosecution, it has to be on the principles of probability and preponderance.

7. The memo exhibit C-2 produced to prove the dishonoring of cheque was not worth reliance as it neither had bank seal nor signatures of the employee and no bank official was examined to prove the memo. In the cross-examination, complainant stated that cheque was presented twice and on first dishonour, no notice was served. There was cutting on the dates in the notice which was in the knowledge of his previous counsel but the advocate was not examined to prove the legal notice.

8. It was considered that the applicant stated he was having annual income of ₹1,50,000/-. He had filed five more complaints under Section 138 of the Act, his financial capacity to advance loan was

doubted. It was taken note of that considering the number of transaction of advancing loan, he is involved in business of lending money without obtaining a licence.

9. No case is made out for grant of leave, as no legal or factual error, much less perversity has been pointed out in the impugned judgment. The conclusion arrived at by the trial court is plausible reason.

10. The application is dismissed.

[AVNEESH JHINGAN]
JUDGE

18th October, 2023
Parveen Sharma

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