HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-4031-2016 (O&M)

Date of Decision: 14.03.2023

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Tajinder Singh ... Petitioner

VS.

Sanjeev Kumar &Anr. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Mohinder Kumar, Advocate for the petitioner

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Sandeep Moudgil, J.

This criminal revision petition has been preferred by the petitioner against the judgment dated 09.08.2016 passed by the Addl. Sessions Judge, Kapurthala vide which the respondent No.1 has been acquitted.

As per allegations of the petitioner-complainant, in order to discharge the standing liability, the accused issued a cheque No.656464 dated 10.07.2011 in the sum of Rs.70,000/- drawn on Catholic Syrian Bank Limited, Phagwara. The accused also assured the petitioner-complainant that he had sufficient funds and the cheque would be honoured on presentation. The petitioner-complainant presented the abovesaid cheque in his bank i.e. State Bank of Patiala, Hoshiarpur Road, Phagwara, for encashment, but the same had been received back unpaid by petitioner-complainant alongwith memo of the bank of the accused dated 10.03.2011 bearing remarks "Insufficient funds". The abovesaid cheque was dishonoured by the accused knowingly and intentionally. Thereafter, the petitioner-complainant sent a legal notice dated 20.07.2011 under registered cover and speed post to the accused, requesting him to make the payment of the abovesaid cheque within

15 days from the receipt of the notice, but the accused failed to repay the amount within stipulated period. Hence this complaint.

The trial court vide judgment and order dated 19.01.2015 convicted the respondent No.1 and sentenced to undergo RI for one year under section 138 of Negotiable Instruments Act. Against the said judgment and order, the respondent No.1-accused preferred appeal before the Addl. Sessions Judge, Kapurthala who vide judgment dated 09.08.2016 set aside the judgment and order of the trial court dated 19.01.2015 and acquitted the respondent No.1 of the notice served upon him under Section 138 of the NI Act. Aggrieved, the petitioner-complainant has filed this revision petition.

Learned counsel for the petitioner-complainant contended that while passing the impugned judgment of acquittal dated 09.08.2016, the appellate court has totally ignored the fact and evidence on the record that the accused-respondent No.1 has admitted his signatures on the cheque in question. While passing the impugned judgment of acquittal dated 09.08.2016, the Appellate Court has relied upon a Criminal Complaint (Ex. DA) filed by the accused-respondent No.1 against some persons namely Harpreet Singh, Jasbir Singh and Sukhdev Singh u/s 323, 365, 368, 342, 148, 149 of IPC, wherein the present accused-respondent No.1 has alleged that he was beaten up and confined by the above said Harpeet Singh, Jasbir Singh and Sukhdev Singh. It is pertinent to mention here that the present complainant-petitioner Tajinder Singh is neither named in this criminal complaint nor he is arrayed as accused in the said Criminal Complaint (Ex. DA). Moreover, it has already been held by the trial Court that the Criminal Complaint (Ex. DA) has been filed after issuance of the present cheque in question. It has also been held by the trial Court that it has not been explained by the accused respondent No.1 as to how the present complaint has been filed just to pressurize to withdraw the above said complaint which is Ex. DA.

It is further urged that the appellate court has not considered the fact that though the accused-respondent No.1 has alleged that the cheque in question was not issued to the present petitioner-complainant and the cheque has been forged and fabricated, the accused-respondent No.1 has not given any complaint to the police in this regard that the cheque in dispute is forged and fabricated. The appellate court has also ignored the fact and evidence on the record that the accused-respondent No.1 has admitted his signatures on the cheque in dispute.

Further, it is the contention raised by learned counsel for the petitioner that the appellate court, while passing the impugned judgment of acquittal dated 09.08.2016 has wrongly held that the complainant could not prove his capacity to advance the loan of Rs. 70,000/- and he has not mentioned the above said loan amount of Rs. 70,000/- in his income tax returns. A perusal of the testimony of the complainant proves that he has specifically deposed that he is working with his father in spare parts business and the above said amount of Rs. 70,000/- was lying with him, which was his savings and he has given it to the accused-respondent No. 1 as friendly loan and in discharge of the said liability the accused- respondent No. 1 has issued the cheque in question to the complainant.

Heard learned counsel for the petitioner and gone through the record.

Before, adverting to the aforesaid controversy, it may be worthwhile to notice the provisions of Sections 118(a) and 139 of the NI Act which read as under:-

> *"**118. Presumptions as to negotiable instruments** – Until the contrary is proved, the following presumptions shall be made :*
> *(a) of consideration - that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration."*
> *"**139. Presumption in favour of holder** - 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 for the discharge, in whole or in part, of any debt or other liability."*
> *Presumptions both under Sections 118(a) and 139 of the Act are rebuttable in nature.*

In terms of Section 4 of the Evidence Act whenever it is provided by the Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. The words 'proved' and 'disproved' have been defined in Section 3 of the Evidence Act (the interpretation clause) to mean :-

> *"**Proved** - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.*
> ***Disproved** - A fact is said to be disproved when, after considering the matters before it the Court either believes that it does not exist, or considers its non-existence so probable that a*

prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist."

Applying the said definitions of 'proved' or 'disproved' to principle behind Section 118(a) of the Act, the Court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the petitioner-complainant could be relied upon. The standard of proof evidently is pre-ponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on records but also by reference to the circumstances upon which he relies. Presumption drawn under a statute has only an evidentiary value. Presumptions are raised in terms of the Evidence Act. Presumption drawn in respect of one fact may be an evidence even for the purpose of drawing presumption under another.

In the present case, respondent No.1 immediately after receiving legal notice from the petitioner-complainant had given a detailed reply vide notice, dated 10.08.2011 (Ex.C6) and explained the circumstances to the petitioner-complainant even before filing the complaint in which he denied preexisting liability. Moreover, he explained how the respondent No.1 took a loan of Rs.15,000/- from Harpreet Singh and admittedly as per cross-examination of the petitioner aforesaid loan had been returned to Harpreet

Singh. However, two cheques were taken by Harpreet Singh with the help of their employees had been misused in connivance with the petitioner-complainant in the aforesaid complaint. He further proved his private complaint filed against Harpreet Singh and the same had been placed on record as Ex.DA by the respondent No.1. No doubt the aforesaid complaint was filed during the same time when the legal notice was issued, however, on the other hand each and every defence taken by the respondent No.1 in his reply to the legal notice as well as statement u/s 313 of Cr.P.C. had been admitted by the petitioner-complainant.

Even perusal of legal notice, complaint and cross-examination of petitioner-complainant shows neither he mentioned a single date and time when the aforesaid loan was given to the respondent No.1 nor he knew who filled the cheque. Moreover, it is a case where respondent No.1 took preliminary objections while giving reply (Ex.C6) to the legal notice issued by the petitioner-complainant that the aforesaid cheque had been issued to Harpreet Singh at the time of getting loan from him and even the complaint against Harpreet Singh had already been proved by him as Ex.DA. On the other hand, none of the single witness specifically Harpreet Singh with whom petitioner-complainant admittedly having cordial relations was called to witness box which may be the best witness for the petitioner-complainant party.

Moreover, it is a case where as per cross-examination of the petitioner-complainant, he admitted that

> *"I am not doing any work. My father has a spare parts business and I am working with him. I do not take salary from my father*

> *and only helping his work.", "He saved the aforesaid Rs.70,000/- during study and therefore, the aforesaid amount was lying in his house. Even he admitted to such an extent that he opened the aforesaid bank account for the last 2½ months or 01 month, prior to the occurrence."*

In ***Bharat Barrel & Drum Manufacturing Company v. Amin Chand Payrelal, 1999(2) RCR(Civil) 615 : [(1999) 3 SCC 35]*** the Supreme Court clearly opined that it is not necessary for the defendant to disprove the existence of consideration by way of direct evidence.

Similarly in ***Hiten P. Dalal v. Bratindranath Banerjee, 2001(3) RCR(Crl.) 460 : [(2001) 6 SCC 16],*** a 3-Judge Bench of Supreme Court held that although by reason of Sections 138 and 139 of the Act, the presumption of law as distinguished from presumption of fact is drawn, the Court has no other option but to draw the same in every case where the factual basis of raising the presumption is established. Pal, J. speaking for a 3-Judge Bench, however, opined:

> *"...Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter, all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.*

The appellate court rightly observed that unless the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, "after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists". The rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the "prudent man". So while taking into consideration the aforesaid facts and circumstances and the contention of the learned counsel for the respondent No.1 as well as law settled by Supreme Court of India, the appellate court rightly observed that it is a case where no pre-existing legal debt was there and even petitioner-complainant could not prove his capacity.

It is further relevant to mention over here that even as per cross-examination of the petitioner-complainant, he admitted that in regard to the aforesaid amount he did not mention in the Income tax return and he admitted that he was filing Income tax return for the last four years. It is settled law that accused for discharging burden of proof placed upon him under his statute need not be examined. He may discharge his burden on the material already brought on the record and accused has conscious right to maintain silence. Standard of proof on the part of the accused and that of prosecution in a criminal case is different.

The appellate court further rightly observed that the discussion of the aforesaid case clearly shows that how respondent No.1 was able to rebut a presumption u/s 118 and 139 of the Negotiable Instruments Act, and discharged the burden upon him, by way of sending his reply to the legal notice dated 10.08.2011 and defence taken by him u/s 313 Cr.P.C. alongwith admission on the part of the petitioner-complainant in his cross-examination. Moreover, aforesaid evidence led by the respondent No.1 appears to be so probable that a prudent man under that circumstances to act upon the supposition to that it exits. As such, the appellate court rightly came to the conclusion that the petitioner-complainant could not prove his case beyond reasonable doubt against the respondent No.1 and thus observed that respondent No.1 deserved acquittal of the notice served upon him in this case.

In view of the above discussion, there is no illegality or infirmity in the judgment passed by the appellate court. Accordingly, the present criminal revision petition is hereby dismissed.

14.03.2023
V.Vishal

(Sandeep Moudgil)
Judge

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