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

CRM-A-2174-2019 (O&M)
Decided on : 15.02.2023

Krishan Kumar ...... Applicant

Versus

Akbar Ali ...... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Harshit Jain, Advocate
for the applicant.

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<u>Manjari Nehru Kaul, J.(Oral)</u>

The instant application has been filed under Section 378(4) r/w Section 482 Cr.PC for grant of leave to appeal against the judgment dated 02.07.2019 passed by JMIC, Dhuri.

Learned counsel for the applicant-complainant *inter alia* contends that once the signatures on the cheque had been admitted by the respondent, the statutory presumption under Sections 118 and 139 of Negotiable Instrument Act (hereinafter referred to as 'the Act') would operate in favour of the complainant and rather it would be for the accused-respondent to rebut the presumption under the aforementioned Sections by leading cogent evidence in support of his defence. Learned counsel submits that in the present case the trial Court, however, gravely erred in ignoring the said presumption and instead shifted the burden of proof on the complainant. Learned counsel further submits that mere denial of the existence of any legally enforceable debt or liability could not have been made a ground for the acquittal of the accused under Section 138 of the Act. In support of his submissions, learned counsel has placed reliance upon the judgment of Hon'ble Supreme Court in ***Jain P.Jose vs. Santosh and another, (Crl. Appeal No.1941 of 2022) decided on 10.11.2022***.

Heard learned counsel for the applicant and perused the relevant material on record.

This Court does not find any force in the submissions made by learned counsel for the applicant that the trial Court had failed to raise statutory presumption under Sections 118 and 139 of the Act in favour of the complainant.

A perusal of the impugned judgment reveals that while discussing the presumption under Sections 118 and 139 of the Act, the trial Court observed that the said presumptions were rebuttable in nature. Still further, the trial Court did not err at all in observing that in order to rebut the said presumption, the respondent-accused was not to prove his defence beyond shadow of reasonable doubt but on the touchstone of preponderance of probabilities and the accused could do so by pointing to inherent inconsistencies in the case set up by the complainant to demolish his case as being unbelievable or improbable.

It would also be relevant to observe here that there is nothing which stops the respondent-accused from rasing a probable defence qua the financial incapacity of the complainant to extend the amount in dispute. The respondent-accused can do so by either leading evidence in his defence or by referring to material placed on record by the complainant. Further more, it is also open to the accused to prove the financial incapacity of the complainant by cross-examining him qua the same.

In the case in hand, the complainant was cross-examined by the accused by putting relevant questions qua his financial incapacity to lend a loan in the sum of Rs.2 lakhs to the respondent-accused. It is a matter of record and also admitted by the complainant that he was getting Rs.25,000/- as pension and was not doing any other work, and hence he had no other source of income. Admittedly, he had also extended a loan of Rs.5,71,000/- to one SMD Company, another amount of Rs.2 lakhs to one Inderpal Singh and Rs.1,50,000/- to Manjeet Singh.

The trial Court, thus, rightly concluded that despite having limited source of income of just Rs.3,50,000/- per annum, it was highly improbable that the complainant would have still been able to lend a huge sum of approximately Rs.10 lakhs to different people. The respondent-accused was thus, successfully able to raise a doubt qua the financial incapacity of the complainant. Still further, the amount in question was given to the respondent in cash in the presence of one Sanjiv Kumar, who for reasons best known to the complainant, was not even examined by him. The examination of Sanjiv Kumar could have come to the rescue of the complainant specially when there was no writing or acknowledgment executed qua the transaction which allegedly took place between the complainant and the accused. Not only this, there was no mention about the loan amount even in the Income Tax Returns of the complainant.

Furthermore, it is not even the case of the complainant that the accused was in any manner related to him and thus, it does raises eyebrows as to what were the compelling circumstances which made the complainant still extend a loan of such a huge amount to the respondent-accused.

As an upshot to the above, this Court has no hesitation in observing that the respondent-accused was successfully able to raise a probable defence on the touch-stone of the preponderance of probabilities by rebutting the statutory presumption under the Act. Accordingly, the present application seeking to leave to appeal stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

15.02.2023
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No