238 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1057-MA-2017
Date of Decision: 18.11.2024

SAURABH GARG

…..APPELLANT

VERSUS

ANUJ GARG

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sumit Gupta, Advocate for the appellant.

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SANDEEP MOUDGIL, J

CRM-15939-2017

This application has been filed under Section 5 of the Limitation Act for condonation of delay of 12 days in filing the appeal.

For the reasons mentioned in the application and in view of the submission made by learned counsel for the applicant, the application is allowed and delay of 12 days in filing the appeal is condoned.

CRM-A-2387-MA-2018

1. Learned counsel for the appellant by filing the present appeal, under Section 378(4) Cr.P.C, has assailed the judgment dated 30.01.2017 passed by the Judicial Magistrate 1st Class, Bahadurgarh, dismissing the complaint and acquitting the respondent-accused therein of the charges framed against him under Section 138 of the Negotiable Instruments Act (for short ' the Act').

2. Factual Matrix of the case leading to the filing of present petition unfolds as that the respondent approached the appellant in the month of March 2014, and requested him to give a friendly loan of Rs. 10,00,000/-.

The complainant accepted the request of accused and the accused took a friendly loan of Rs. 10,00,000/- from the complainant for his domestic needs. The accused had promised to repay the said loan within one month or on demand by the complainant. Subsequently, the complainant made several requests to repay the said loan amount but the accused avoided the matter on one or the other pretext. On several requests of complainant, the accused in discharge of his aforestated legally enforceable liability issued a cheque bearing no. 204818 (hereinafter referred to as "cheque in question") dated 8.08.2014 amounting to Rs. 10,00,000/- of in favour of the complainant, which was duly signed by the accused. It is further alleged that on 9.08.2014. at the request and assurance of the accused, the complainant deposited the aforestated cheque for the realization of the amount but the aforestated cheque was returned unpaid by the bankers of accused with the remarks "image not clear, present again with paper". The intimation in this regard was given to the complainant by his bank vide Memo dated 11.08.2014. Thereafter, the complainant approached the accused and apprised him about the return of the cheque who told the complainant to present the cheque again. It is further alleged that on 14.08.2014, on the assurance of the accused, the complainant again deposited the aforestated cheque but it was returned unpaid by the bankers of accused with the remarks "Account Closed" and issued a cheque Return Memo dated 19.08.2014 to this effect. It is further alleged that the complainant again approached the accused regarding the payment of amount of dishonoured cheque, but the accused flatly refused to pay the same.

3. Later on, the complainant got served upon the accused a legal notice dated 16.09.2014, through his counsel by registered A.D cover for

payment of the cheque amount of Rs. 10,00,000/- but the accused failed to make the payment of the cheque amount within the statutory period of 15 days, despite service of the legal notice, which has constituted the cause of action to file the present complaint. Hence, the complaint was filed but the Court below after considering the evidence adduced by the appellant and after hearing both the sides dismissed the complaint and acquitted the respondent vide impugned order dated 30.01.2017.

4. Learned counsel for the appellant contends that the judgment passed by the trial Court suffers from grave illegality, perversity and the same is based upon surmises and conjectures and as such the same is liable to be set aside. It is further contended that the trial Court gave the benefit of acquittal to the respondent-accused on the ground that there are certain discrepancies in the version of the complainant, which culminated into being the defence of accused probable and trustworthy. Such an erroneous finding deserves to be set aside as the trial Court has utterly failed to appreciate the well proven oral as well documentary evidence of the complainant.

5. It is further contended that the learned trial Court erred in holding that account in question does not belong to the accused rather it belongs to the firm of his father whereas while returning such a finding the Court below failed to appreciate that that neither while recording the statement U/s 313 Cr.P.C the accused said that he never signed the cheque in question nor he examined any witness in defence; however a perusal of cheque in question, memo vide which cheque in question was returned back dishonoured, legal notice served upon the accused/respondent clearly transpires that every pre-requisite step necessary to be complied U/s 138 of N.1 Act.

6. Learned counsel for the appellant contends that it is proved on

record that the accused/respondent had issued Cheque in question for discharging his legal liability from the account of his father and played fraud upon the complainant. The said cheque was accordingly presented within the period of its validity but the same was dishonoured. Upon the dishonour a demand notice was issued within the statutory period and the accused/respondent has failed to make any payment within 15 days of the receipt of the said legal notice and thus all the ingredients of the offence under section 138 of Negotiable Instruments Act accused/respondent are made out. The memo of the returning bank clearly shows that the cheque was dishonoured due to the reason "Account Closed" and thus all the ingredients of offence under Section 138 of Negotiable Instruments Act are duly proved.

7. Further, the contention raised is that execution/ signature over the cheque in dispute has never been denied. As per settled proposition of law, once it is proved that signatures of the accused are available on the cheque, which was dishonoured by the banker, in that case the accused-respondent shall be liable to face the consequence of dishonour of the cheque, then, it can legally be presumed that the cheque has been issued in discharge of a legally enforceable debt. The presumption under Section 139 of the N.I. Act, 1881 in the present case is very strong in favour of the applicant-appellant, but in spite of that, the trial Court returned a finding of acquittal while dismissing the complaint in question. Despite being a fully proven case, the trial Court has wrongly and illegally acquitted the accused. Hence, the impugned judgment dated 30.01.2017 is liable to be set aside.

8. I have heard learned counsel for the applicant/appellant and gone through the record.

9. From perusal of the judgment, it is apparent that firstly, the

respondent has not admitted the execution of the cheque and has denied his signatures on it, thus, presumption as envisaged under Section 118 and 139 of the Act will not be attracted.

10. It has been rightly noticed by the Trial Court that from the evidence placed on record, it is clear that the cheque in question bears the date 08.08.2014 and the same was dishonoured due to the reason "Account Closed" vide Return Memo dated 19.08.2014. Thereafter, a legal notice dated 16.09.2014 was duly sent to the accused by the complainant calling upon the accused to pay the cheque amount within 15 days of the receipt of the same. The accused did not reply to the said notice and did not make any payment. Further, the cheque in question drawn on Oriental Bank of Commerce, Bahadurgarh belonging to "Shankar Cloth House" whose authorised signatories are Shiv ji Lal and Rakesh Garg and this account already stood closed on 14.03.2012. It does not relate to any account maintained by the accused in his own name. Certain conditions are prescribed to be fulfilled before holding any person guilty under Section 138 of NI Act and one of the foremost and necessary conditions is that the cheque must be drawn on an account maintained in the name of accused sought to be prosecuted. In the present case, the said condition is missing. The above- mentioned facts substantiate the plea raised by the accused that the cheque in question could not have been executed by him and does not bear his signatures.

11. It has rightly been held by the Trial Court that as per the version of the complainant as averred in the complaint, in the month of March 2014, the accused had requested the complainant for a friendly loan of Rs 10.00,000/-. However, in his cross- examination suffered before the court, the

complainant contradicted his own stand and deposed that the accused had borrowed the above amount from him on 03.04.2014 i.e. in the month of April.

12. Further, in his cross examination, the complainant has categorically deposed that the accused had given him the cheque on the same day on which he had borrowed the amount from the complainant i.e on 03.04.2014. However it is relevant to note that the cheque in question is dated 8.08.2014. Therefore, the assertion of the complainant that the cheque in question was issued by the accused on the same date on which he had taken the loan from the complainant stands falsified.

13. Further, the complainant has himself deposed in his testimony that he is engaged in the wholesale business of sale and purchase of mobile phones and that he maintains an account of all his daily transactions. However, he admitted that he did not make any entry with respect to the disputed loan of Rs 10,00,000/- allegedly advanced by him and it is beyond the comprehension of a reasonable prudent mind as to why the complainant, despite being a businessman and who usually keeps a record of all his daily transactions in the ordinary course of business, did not keep any record or did not make any entry with respect to the alleged loan transaction of such a high amount of Rs 10,00,000/-which took place between him and the accused.

14. This court finds no reason to disbelieve the contentions of the respondent inasmuch as the appellant has failed to prove that the cheque was issued against the legally enforceable debt and moreover the defence put by the accused is supported by substantial proof and the accused has been able to raise a cogent doubt regarding the truthfulness of the issuance of the

cheque in question and once the presumption under sections 118(A) and 139 of the Act of 1881 stands rebutted by the accused. The burden is upon the complainant to prove that the cheque was issued by the accused in discharge of any existing legal liability which the appellant/complainant has failed to prove.

15. 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.

16. On perusal of the judgment passed by the trial Court dated 30.01.2017, 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.

17. Accordingly, the leave to appeal stands declined.

18. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

18.11.2024
anuradha

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No