236 IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CRM-A-2244-MA-2018
Date of Decision: 01.05.2024

M/S APL MACHINERY PVT.LTD.

…..APPELLANT

VERSUS

ANIL SAINI .....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kunal Dawar, Advocate for the Appellant.

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SANDEEP MOUDGIL, J

1. The application under Section 378(4) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 30.07.2018 passed by JMIC, Faridabad (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, (in short, 'the NI Act'), on the ground that the appellant has miserably failed to prove that cheque in question was issued by the respondent-accused in discharge of his legal debt and liability.

2. Briefly putforth, the accused-respondent was working with the applicant company wherein he took loan of Rs.4 lakhs on 20.01.2016 but unfortunately on 07.04.2016, the respondent-accused sent his resignation to the applicant company without clearing the loan and on thereafter on 09.04.2016, he was called in the applicant company wherein he admitted his loan and issued a cheque bearing no. 905712 for Rs.4 lacs in favour of the applicant company and furthr requested to deposit the cheque after 10th MAY 2016 which was deposited on 13.05.2016 which got dishonoured with remarks “Payment Stopped by Drawer”. Thereafter, the accused-respondent was got served legal notice dated 10.06.2016

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but despite that, the accused-respondent failed to make the payment and complaint was filed against the accused-respondent under section 138 of NI Act which was dismissed vide impugned judgment. Hence, the present appeal.

3. Counsel for the applicant contends that all necessary ingredients to constitute the offence u/s 138 of NI Act has been proved and further the signatures on the cheque in question has been duly admitted by the respondent-accused. Further, the trial court has erred in acquitting the respondent-accused merely on the basis of complaint registered by him to the police regarding theft of his cheques from the office without mentioning the cheque no in the complaint.

4. He vehemently contends that the trial court has ignored the fact that the respondent-accused has himself admitted his signatures on the cheque in question and further it did not consider the testimony of the witness i.e Milap Arora, Manager Commercial, who was examined as CW1 and has proved on record the documents Ex. C1 to C12. He further contends that the trial court has erred in holding there being no evidence to prove that the company has suffered loss whereas the police complaint which was filed by the company on 28.11.2014 had been produced on record as Ex. C11 and the writing by the respondent-accused accepting his fraud committed by him had been placed on record as Ex.C12.

5. Having heard learned counsel for the applicant and going through the case file, this Court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

6. It is evident from the record that the accused-respondent has admitted his signatures on the cheque in question but also took specific plea that his cheque was stolen from the office and the applicant has misused the same. Further, it is a settled principle of law that in complaints under section 138 of NI Act, the court has to presume that the cheque was issued under legal liability but at the same time, this presumption is rebuttable. Rather, it is equally settled that accused/respondent can rebut such a presumption by raising a probable defence of "preponderance of

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probabilities” and such an inference can be drawn, not only from the material on record, but also by reference to the circumstances upon which the accused/respondent relies. The accused-respondent in the present case submits that the appellant has misused the cheque in question which was stolen from his office and to that, he had also registered a complaint to the police station.

7. Presumptions under section 138 and section 139 of NI Act are rebuttable presumptions and same are rebuttable on the preponderance of probabilities. It is a settled principle of law that once the defence is able to rebut the presumptions under the NI Act, it is for the applicant to prove the case beyond reasonable doubts. The responsibility of the defence is over by creating a reasonable doubt and once the applicant fails to rebut the same, the respondent-accused becomes entitled to the benefit of doubt.

8. In my view, after meticulously going through the facts, it is crystal clear that the evidence produced by the applicant as Ex.C12 is a mere piece of paper wherein there is no stamp or signature of any of the witness on the same. Moreover, during cross examination of CW1, it was admitted that the cheque in question was not given to him by the respondent-accused meaning thereby, he had no knowledge of the material facts of the present case.

9. In the light of above stated discussion, this Court is of the considered view that no fault can be found with the judgment passed by the trial court dated 30.07.2018 and as such the present application under Section 378(4) CrPC is declined and accordingly, having no merit, the appeal also stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

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

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