2024:PHHC:147049

240 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-2387-MA-2018
Date of Decision: 23.07.2024

RAM KUMAR

…..APPELLANT

VERSUS

MOHAN LAL

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr.Gagandeep Singh, Advocate
for the applicant/appellant.

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SANDEEP MOUDGIL, J

1. Learned counsel for the applicant/appellant by filing the present appeal, under Section 378(4) Cr.P.C, has assailed the judgment dated 09.08.2018, passed by the Judicial Magistrate Ist Class, Yamuna Nagar, 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 case unfolds as that the complainant/appellant had friendly relation with each other on that account accused/respondent obtained a loan of Rs.4,00,000/-. In order to discharge his liability, the accused issued a cheque bearing No.341607 dated 05.12.2015 for an amount of Rs.4,00,000/- in favour of complainant. On presentation of the said cheque for encashment, the same got dishonoured with the remarks “drawers’ signature incomplete” vide memo dated 08.12.2015.

Thereafter, the accused was served upon legal notice dated 15.12.2015 to make the payment but he defaulted and therefore this present complaint was filed.

3. Learned counsel for the applicant/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. It is further contended that the learned trial Court failed to appreciate that the respondent-accused has himself admitted his signature on the impugned cheque. It is well settled position in law that once an accused admits his signatures on 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 09.08.2018 is liable to be set aside.

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

5. From perusal of the impugned judgment, it is apparent that the accused disputed the signatures on the cheque. Furthermore the cheque was dishonoured by the bank due to difference in signatures, therefore, the burden of proof was upon the complaint to prove that the cheque in question bears the signatures of the

accused/respondent. However, the complainant/appellant failed to provide any evidence in this regard. On the other hand, this Court cannot close its eyes to the fact that the accused/respondent alleges that the cheque was stolen by one Bunty, the proprietor of Krishna Timbers in connivance with the complainant.

6. The main bone of contention of the appellant that the amount disputed i.e., 4 lacs was advanced to the accused/respondent in presence of the nephew of the complainant and brother Satish Kumar, however, none of them have been examined by the complainant/appellant to prove his stance. Also the financial capacity of the complainant/appellant raises a serious doubt in the mind of this Court, as when already the complainant has availed a loan of Rs.7 lacs from Punjab National Bank and why would he further lend 4 lacs to the accused/respondent. It is also pertinent to mention that the complainant/appellant has failed to place on record any receipt or document to substantiate that he lended Rs.4 lacs to the accused/respondent.

6. 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.

7. 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.

8. On perusal of the judgment passed by the trial Court dated 09.08.2018, 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.

9. Accordingly, the leave to appeal stands declined.

10. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

23.07.2024
sham

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