HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CRM-A-1736-MA-2017 (O&M)
Reserved on 18.01.2024
Pronounced on 03.04.2024
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Krishan Kishore Sharma ... Applicant

VS.

Guru Nanak Foundry & Engineering Works & Anr. ... Respondents
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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL
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Present: Mr. Ravi Dutt Sharma, Advocate for the applicant

Mr. Parmod Chauhan, Advocate for the respondents
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Sandeep Moudgil, J.

This application under Section 378(4) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 03.06.2017 passed by JMIC, Kaithal (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, (in short, 'the NI Act').

Brief facts of the case are that the accused in discharge of his debt/liability issued the cheque bearing no. 745193 dated 04.08.2014 drawn upon Punjab National Bank Jind Road, Kaithal in the favour of complainant on 04.08.2014, however, the same was dishonoured on the ground of "Funds Insufficient" in the account of accused. A legal notice dated 11.08.2014 was issued which the accused refused to accept. Despite notice, the accused has failed to make the payment of the cheque amount to the complainant and in this manner the accused have committed the offence punishable under section 138 of Negotiable Instrument Act. The complainant filed a complaint under Section 138 of the NI Act before the trial court and the trial court vide impugned judgment dated 03.06.2017 acquitted the accused of the notice of accusation. Hence, the complainant has filed the present appeal.

Learned counsel for the complainant contended that the trial court failed to appreciate the evidence led by the complainant to prove the guilt of the accused. He further submitted that the trial court has failed to appreciate the fact that while taking advance from the complainant, the accused also issued a receipt dated 27.7.2014 Ex.C1 wherein the accused has acknowledged the loan of Rs.2,25,000/- and has also acknowledged that the cheque in question has been issued for the payment of the loan taken by the accused from the complainant.

It is further argued that the accused had admitted his signature over the said receipt Ex.C1 but the trial Court did not rely upon the said receipt on the ground that there is no witness over the said receipt and further that the said receipt has not been got proved by the complainant. He further averred that while appearing as a witness in this case as CWI, the complainant duly proved the said receipt and the findings of trial Court to this effect is erroneous.

I have heard learned counsel for the applicant and gone through the case file.

Sections 138 and 139 of the said NI Act requires that the Court 'shall presume' the liability of the drawer of the cheque(s) for the amount for which the cheque(s) is drawn. It is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption has been established i.e. execution of cheque(s) by the accused. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. Such a presumption is a presumption of law as distinguished from a presumption of fact which describes provisions by which the court may presume a certain state of affairs.

Once execution of the cheque is proved/admitted, the presumptions u/s 118(a) and 139 of the said Act would arise that it is supported by a consideration. Such presumptions are rebuttable in nature and the accused can prove the non-existence of a consideration by raising a probable defence, and if the accused is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the complainant who will be obliged to prove it as a matter of fact and upon its failure to prove would dis-entitle him to the grant of relief on the basis of the negotiable instrument. It is settled proposition of law that the complainant must prove the guilt of an accused beyond all reasonable doubt, however, the standard of proof so as to prove defence on the part of an accused is 'preponderance of probabilities' and inference of preponderance of probabilities can be drawn not only from the materials brought on records by the parties but also by reference to the circumstances upon which he relies.

The trial court rightly observed that to make a person criminally liable, the cheque must have been issued in discharge of whole or any part of debt of liability. Amount written in cheque corrected in figures or in number without the knowledge and consent of maker of the cheque amounts to material alteration and also amounts cancellation. The figure “2" was specifically inserted in cheque Ex.C3 specifically without the knowledge of the drawer is a material alteration which makes the documents void. Once the negotiable instrument is found to be void, it cannot be held that any legal recoverable debt is due from the maker of that document. The alteration in the document Ex.C3 is well proved by the evidence of handwriting expert and the report is well proved by accused Ex.DW3/B.

In the present case, the accused has denied the existence of any existing legal liability. If the cheque was issued by the accused then also keeping in view the material alteration in the cheque, the instrument becomes void and the accused is not liable for any type of legal recoverable debt. The receipt issued on the letter pad of the shop of accused is also not proved the liability of the accused in any manner as no witness regarding the receipt is on the letter pad and without any witness the document did not prove any type of liability towards the accused. There is nothing is on file to prove any type of transaction or debt to held the accused liable under section 138 of Negotiable Instrument Act. Moreover, the accused has denied that he never issued the cheque in favour of the complainant to pay back any debt or issued the receipt regarding any type of loan amount or transaction.

In view of the above discussion, this Court is of the considered view that there is no infirmity, perversity and illegality in the judgment passed by the trial court and as such the present application under Section 378(4) of CrPC, seeking leave to appeal, is dismissed.

03.04.2024
V.Vishal

(Sandeep Moudgil)
Judge

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