240 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-819-2019
Date of Decision: 20.11.2024

SURJEET SINGH

…..APPELLANT

VERSUS

RISHI PAL

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Karamjeet Singh, Advocate for the appellant.

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SANDEEP MOUDGIL, J

1. Learned counsel for the appellant by filing the present appeal, under Section 378(4) Cr.P.C, has assailed the judgment dated 04.01.2019 passed by the Sub Divisional Judicial Magistrate Guhla, 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 is the friend of appellant and is working as a chowkidar in Government Senior Secondary School, Cheeka and also does the work of providing tractor trolley for mandi as wellas earth filling etc. It is further alleged that in the month of May 2016, respondent contacted the appellant and requested him to advance Rs.2 lacs for purchase of tractor and trolley and assured the appellant that he will definitely pay back the said borrowed amount within six months. It is further alleged that being a good friend of the appellant, he agreed to provide interest free advance of Rs.2 lacs

to the respondent and accordingly, on 08.05.2016, respondent visited at the house of appellant and borrowed Rs.2 lacs in cash from the appellant at village Harigarh Kingan and promised to pay back the said borrowed amount within a period six months. It is further alleged that the respondent has failed to pay back the said borrowed amount within stipulated time period and lastly on 21.04.2017 the appellant contacted the respondent and requested him to pay back the said borrowed amount, upon which respondent has paid Rs.10,000/- in cash to the appellant. It is further alleged that in discharge of existing and legally enforceable liability the respondent issued a cheque bearing No.964710 dated 21.04.2017 amounting to Rs.1,90,000/- in favour of the appellant which was to be drawn upon Oriental Bank of Commerce, Cheeka from his account No.00522191032658, (for the sake of brevity referred to as "cheque in question"). It is further alleged that the appellant presented the said cheque for encashment with his banker Allahabad Bank, Cheeka, but the same cheque was returned dishonoured to the appellant with the remarks of "Fund Insufficient" vide memo dated 24.04.2017. 4. It is further alleged that the appellant contacted the respondent and told about the dishonouring the said cheque due to funds insufficient and requested him to make the payment in cash but the accused refused to make said borrowed amount. It is further alleged that the appellant got issued a registered notice dated 17.05.2017 served upon respondent through his counsel but despite served the legal notice, the accused did not make the payment of said cheque and therefore the complaint was filed by the appellant but the Trial Court 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 04.01.2019

3. 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. He further contends that the Trial Court erred in holding that the respondent has been able to establish the probability of his defence and the appellant failed to prove his complaint. It is further contended that the learned trial Court further erred in holding that the appellant did not know about the land of the respondent as well as his occupation whereas in friendship it is not mandatory that a person should know about the background of his friend, moreso, the respondent used to take the money from the appellant but he always returned the same and there was a very old relationship between them. He contends that the Trial Court further erred in holding that no document was executed at the time of advancement of 'loan' whereas in the complaint filed by the appellant it was mentioned that the respondent borrowed the money from the appellant and not the loan, that too without interest. The Trial Court further erred in holding that the appellant did not verify the repayment capacity before lending any amount to person with whom he has no previous financial dealings whereas at the time of filing of the complaint, the appellant stated that the respondent was working as Chowkidar in Government Senior Secondary School, Cheeka and also was doing the work of providing tractor trolley for mandi as wellas earth filling etc, therefore it cannot be said that he did not verify the repayment capacity. Further, the trial

Court erred by stating that the funds of the complainant is highly doubtful whereas no person can remember the details of the amount received by him from any source, moreso, the appellant is an agriculturist and no such person maintains the register regarding payment transactions. The Trial Court further failed to consider that the signatures are admitted and with regard to the body of the cheque, respondents got fail as he never stepped into the witness box and neither examined the expert in the stand of his plea. 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 04.01.2019 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 judgment, it is apparent that the basis of advancement of loan by complainant to accused, as pleaded in the complaint, is that the accused is good friend of complainant but the same is not proved as in the cross-examination of complainant he showed his ignorance towards the caste of accused and even about his family members. Further, initially the complainant had filed the present complaint whereby the address of accused was mentioned as Chowikdar in Tehsil Guhla District Kaithal but in the body of complaint, it is mentioned that the accused is posted as Chowkidar (watchman) in Goverment Girls Senior Secondary School Cheeka. In cross

examination also, complainant deposed that the accused is working as Chowkidar in Goverment School, but deposed that he has not confirmed from the Principal or any staff member of that school about the posting of accused as Chowkidar which proves that the complainant is total stranger to him.

6. Further, the Court has rightly noticed from the cross examination of complainant that earlier there were no financial transactions between complainant and accused, moreso, no document was executed between them at the time of loan and admittedly, no rate of interest was agreed upon. All these facts proves the falsity of allegations, as no person shall lend such a huge amount to other that too for an indefinite period and without execution of any document and without agreeing on any interest amount. The Trial Court further rightly held that any prudent person would verify the occupation and repayment capacity before lending any amount to a person with whom he has no previous financial dealings, but in the present case, the complainant neither verified the occupation of the accused, nor could depose about the land owned by accused, meaning thereby that the complainant did not verify about the repayment capacity of the accused, which is highly improbable and the complainant has also failed to prove his financial capacity to advance such loan, which further creates doubt in the mind of court regarding the truthfulness of allegations made in the complaint.

7. As regard the plea of accused that he had handed over blank signed cheque in question to one Jagtar Singh, seems to be probable as the complainant in his cross-examination has admitted that he knows the said Jagtar Singh, and further he admitted that the said Jagtar Singh accompanied him to the court on several occasions, which establishes the proximity of the complainant with the said Jagtar Singh and points towards the probability of

plea of defence of accused.

8. Further, as regards the plea of complainant that accused has not stepped into witness box, thus adverse inference be drawn against him is not correct as the accused has himself not stepped into the witness box, but it is a settled preposition of law that the accused has right to remain silent through out the trial and there is no need for the accused to enter into witness box to rebut the presumption.

9. 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.

10. 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.

11. On perusal of the judgment passed by the trial Court dated 04.01.2019, 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.

12. Accordingly, the leave to appeal stands declined.

13. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

20.11.2024
*anuradha **(a)***

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