HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
****
CRR-917-2024 (O&M)
Decided on 07.05.2024
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Mohammad Rafiq ... Petitioner

VS.

Balwinder Singh ... Respondent

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Ms. Arzoo Modi, Advocate for the petitioner

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Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the judgment dated 12.09.2023 passed by Addl. Sessions Judge, Malerkotla as well as the judgment and order dated 10.09.2022 passed by the trial court in complaint NACT No.874-2018 under Section 138 of the Negotiable Instruments Act, 1881 (in short, the 1881 Act) vide which the petitioner was convicted and sentenced to undergo RI for 1 year and 6 months with a direction to pay compensation of Rs.4,00,000/-.

(2). Learned counsel for the petitioner contends that the courts below have out-rightly ignored the material aspect that the petitioner has not borrowed any amount of Rs.4,00,000/- from the complainant and has also not issued to him any cheque in dispute and that apart, the complainant has not been able to show his financial capacity to advance loan of Rs.4,00,000/-.

(3). He submitted that the Courts below have wrongly believed the version of complainant, without any cogent evidence and the story mentioned in the complaint is concocted and without any basis. It is further argued that the complainant has failed to establish before the courts below that the sum involved in the cheques was advanced in discharge of a legal enforceable debt and this material fact has been given a complete go-bye by the courts below.

(4). Heard learned counsel for the petitioner.

(5). The presumption under Section 118 read with Section 139 of the Act puts an onus upon the petitioner to prove that the cheque in dispute was not issued for discharge of any legal liability. The courts below rightly relied upon the Sections 138 and 139 of NI Act read with Section 114 of Indian Evidence Act which enjoins upon the trial court to raise a presumption of the liability of the drawer of the cheque for the amounts, for which, the cheque is drawn. It has come on record that the petitioner produced no evidence to rebut the aforesaid presumption under Section 139 of the NI Act according to which the respondent received the cheque for discharge of a debt and nothing contrary has been proved by the petitioner.

(6). Besides, before the courts below, the respondent-complainant has shown him to be owner of 15 bighas of land and also has an FDR worth Rs.8 lakhs and that he received lease amount which he kept for purchasing the car and had not shown it in the annual income tax return. Thus, the financial capability of the respondent has been duly considered by the courts below.

(7). It is also noteworthy that the petitioner-accused has not been able to explain as to how the cheque in question went into the possession of the complainant and as such, no defence plea was raised by the petitioner before the courts below. Therefore, once the initial burden is discharged by the Complainant that the cheque was issued by the accused and the signature and the issuance of the cheque is not disputed by the accused, in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for any debt or other liability. The presumption under Section 139 of the N.I. Act is a statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the Complainant/holder of the cheque, in that case, it is for the accused to prove the contrary.

(8). The Court will necessarily presume that the cheque had been issued towards the discharge of a legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits issuance/execution of the cheque and secondly, in the event where the complainant proves that the cheque was issued/executed in his favour by the drawer. The circumstances set out above form the fact(s) which bring about the activation of the presumptive clause. Mere admission of the drawer's signature, without admitting the execution of the entire contents in the cheque, is now sufficient to trigger the presumption. The view so taken is reinforced by the decision of the Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197.***

(9). In view of the above discussion, this Court does not find any material illegality or infirmity in the judgments and orders passed by the courts below.

(10). Dismissed.

07.05.2024
V.Vishal

(Sandeep Moudgil)
Judge

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