2024:PHHC:043027

254 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-94-2021 (O&M)
Date of Decision : April 01, 2024

Manoj Sharma ....**Petitioner**

Versus

Udal Singh ....**Respondent**

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Madan Sandhu, Advocate
for the petitioner.

Mr. Neeraj Gupta, Advocate
for the respondent.

PANKAJ JAIN, J. (Oral)

1. Complainant seeks leave to appeal against judgment of acquittal passed by JMIC, Faridabad.

2. Proceedings were initiated at the behest of the petitioner-complainant by filing complaint against the respondent against dishonoring of cheque bearing No.333429 dated 21.03.2017 for an amount of Rs.9,85,500/- drawn by the respondent. On presentation, cheque was dishonored for *funds insufficient.* The respondent was summoned to face trial. Parties led evidence. On analysing the evidence brought on record, trial Court dismissed the complaint acquitting the respondent of offences punishable under Section 138 of the Negotiable Instruments Act holding that the case being projected by the complainant

suffered from inherent contradictions and thus the complainant failed to discharge onus upon him.

3. Counsel for the petitioner while assailing the impugned judgment submits that once signatures on cheque leaf were admitted by the accused-respondent, there is a statutory presumption in favour of the complainant and thus onus shifted upon the respondent-accused to rebut the same. The respondent-accused having failed in discharging the same, the trial Court committed pitted error in acquitting the respondent-accused.

4. Per contra, counsel for the respondent submits that after analysing whole of the evidence on record, the trial Court has returned the well-reasoned judgment. The respondent raised probable defense that the petitioner was running chit-fund committee and it was on the pretext thereof that he came into possession of the cheque issued by the respondent-accused. As per settled proposition of law, *de hors* the statutory presumption, onus to prove legally enforceable debt or liability is always upon the complainant. The falsity of the case projected by the complainant is evident and has been unveiled by the trial Court on the basis of the admission of the complainant only.

5. Complainant claimed that he handed over the money to the mother of the accused by getting loan from the Oriental Bank of Commerce. He further admitted that he was to pay interest to the Oriental Bank of Commerce at the rate of 11% per annum and was benevolent and magnanimous enough to lend the same to the accused as a friendly loan without interest. He thus submits that the whole case projected by the

complainant does not aspire confidence as the same is not expected from the man of ordinary prudence.

6. Having heard counsel for the parties and after going through the records of the case, this Court finds that the application seeking leave to appeal stands merits and deserves to be dismissed.

7. Law with respect to interference by this Court in the complaint cases arising out of Section 138 of the Negotiable Instruments Act and the principles there to be applied has been laid down by the Apex Court in the case of ***Rangappa Vs. Sri Mohan, (2010) 11 SCC 441,*** wherein it has been held that :-

> *"27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.*
>
> *28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". <u>Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a</u>*

> *defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."*

8. Counsel for the complainant is right in claiming that there is a statutory presumption in the whole of complainant defense the signatures on the cheque leaf are admitted. However, the said presumption like in any other statutory presumption is rebuttable. Accused in order to rebut the said presumption can either rely upon the inherent contradictions in the evidence adduced by the complainant or can lead his evidence.

9. Trial Court while acquitting the respondent has enlisted the inherent contradictions in the case of the complainant as under:-

> *"By appreciating the evidence of the complainant in a whole it comes out that; the money was not given in the presence of any witness; the complainant has withheld his friend Monu from producing in the witness-box; the complainant is not certain about giving the money since in his complaint he stated that money was given to accused but in his evidence during cross-examination he stsated that he has given money to mother of accused; complainant also deposed contradictory regarding the purpose of loan of Rs.7,50,000/- from the Oriental Bank of Commerce since at one place he stated that the loan was taken for marriage of his sister but at the other place he states that the loan was taken for purchasing and renovating the shop; no writing regarding the money had been executed; the list of debtors and creditors is not produced along with the I.T.R; the loan advanced to accused is also not shown in I.T.R.; the loan transaction is not proved on file; he does not recollect the date of giving loan; the complainant also failed to show his capacity to advance such a huge amount to the accused; complainant also failed to explain that when he had aken the loan from Oriental Bank of Commerce at the interest of more than 11% then why he had advanced the same to accused as friendly loan without interest; it is evidence from the evidence of complainant that he has made many contradictions in during his evidence in the court and has not placed the true and actual facts before the court; the*

> *accused not a relative of complainant so, it is not probable that complainant had given such a huge amount as friendly loan without any writing or any interest to accused."*

10. Scope of appeal stands culled out by Supreme Court in the case of ***State of Uttar Pradesh vs. Banne @ Baijnath and others, (2009) 4 SCC 271***, wherein the judgment passed in ***Chandrappa v. State of Karnataka, (2007) 4 SCC 415*** has been discussed and the observations made therein have also been reproduced as under:-

> *"36……….(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.*
>
> *(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*
>
> *(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*
>
> *(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of*

law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.....”

11. After discussing various judgments, the Supreme Court in *Banne @ Baijnath’s* case (supra) has laid down some principles and held as under:-

> *“37....1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.*
>
> *2. The accused is presumed to be innocent until proved guilty. The accused possessed this presumption when he was before the trial court. The High Court's acquittal bolsters the presumption that he is innocent.*
>
> *3. There must also be substantial and compelling reasons for reversing an order of acquittal.*
>
> *This Court would be justified in interfering with the judgment of acquittal of the High Court only when there are very substantial and compelling reasons to discard the High Court's decision.*
>
> *38. Following are some of the circumstances in which perhaps this Court would be justified in interfering with the judgment of the High Court, but these are illustrative not exhaustive:*

(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal….."

12. In view of afore-stated evidence, this Court does not find that the view taken by Trial Court can be said to be improbable.

13. No other ground has been raised to grant leave to appeal.

14. Dismissed.

15. Pending application(s), if any, shall also stand disposed off.

(PANKAJ JAIN)
JUDGE

01.04.2024
spn

Whether speaking/reasoned Yes
Whether Reportable : No