IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CRM-A-2353-2019
Date of Decision: 20.02.2024

RAKESH KUMAR

…..APPELLANT

VERSUS

LAKHVIR KHAN **.....RESPONDENT**

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Preetinder Singh Dhaliwal,
Advocate for the Appellant.

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SANDEEP MOUDGIL, J

1. The application under Section 378(4) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 25.07.2019 passed by JMIC, Barnala (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the appellant bearing no. COMA/228/2017 under Section 138 of the Negotiable Instruments Act, (in short, 'the NI Act'), on the ground that the appellant has miserably failed to prove that cheque in question was issued by the respondent-accused in discharge of his legal debt and liability.

2. Briefly putforth, the accused-respondent availed a loan of Rs. 1,70,000/- from the appellant on 15.04.2014 and executed a receipt in favour of the appellant with his own handwriting and promised to return the amount alongwith interest at 2% per month. In discharge of his legal liability 13.04.2017, respondent-accused issued a cheque no. 397161 dated 13.04.2017 for a sum of Rs. 2,92,000/- drawn on Punjab National Bank,

Barnala which was dishonoured with remarks “Account Blocked”. As a result, the appellant got served legal notice dated 18.04.2017 but the respondent-accused paid no heed which compelled the appellant to register a complaint under section 138 of NI Act that was dismissed. Hence, the present appeal.

3. Counsel for the appellant contends that the trial court has acquitted respondent-accused only on the ground that the appellant did not had any money lending license so the debt if any, cannot be considered as legal liability.

4. He vehemently contends that the trial court has ignored the fact that the respondent-accused has himself admitted his signatures on the cheque in question and further it did not consider the testimony of the witness i.e Milap Arora, Manager Commercial, who was examined as CW1 and has proved on record the documents Ex. C1 to C12. He further contends that the trial court has erred in holding there being no evidence to prove that the company has suffered loss whereas the police complaint which was filed by the company on 28.11.2014 had been produced on record as Ex. C11 and the writing by the respondent-accused accepting his fraud committed by him had been placed on record as Ex.C12.

5. Having heard learned counsel for the applicant and going through the case file, this Court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court.

6. It is evident from the record that the accused-respondent has admitted his signatures on the cheque in question but also took specific plea that his cheque was stolen from the office and the applicant has misused the

same. Further, it is a settled principle of law that in complaints under section 138 of NI Act, the court has to presume that the cheque was issued under legal liability but at the same time, this presumption is rebuttable. Rather, it is equally settled that accused/respondent can rebut such a presumption by raising a probable defence of "preponderance of probabilities" and such an inference can be drawn, not only from the material on record, but also by reference to the circumstances upon which the accused/respondent relies. The accused-respondent in the present case submits that the appellant has misused the cheque in question which was stolen from his office and to that, he had also registered a complaint to the police station.

7. Presumptions under section 138 and section 139 of NI Act are rebuttable presumptions and same are rebuttable on the preponderance of probabilities. It is a settled principle of law that once the defence is able to rebut the presumptions under the NI Act, it is for the applicant to prove the case beyond reasonable doubts. The responsibility of the defence is over by creating a reasonable doubt and once the applicant fails to rebut the same, the respondent-accused becomes entitled to the benefit of doubt.

8. In my view, after meticulously going through the facts, it is crystal clear that the evidence produced by the applicant as Ex.C12 is a mere piece of paper wherein there is no stamp or signature of any of the witness on the same. Moreover, during cross examination of CW1, it was admitted that the cheque in question was not given to him by the respondent-accused meaning thereby, he had no knowledge of the material facts of the present case.

9. In the light of above stated discussion, this Court is of the considered view that no fault can be found with the judgment passed by the trial court dated 30.07.2018 and as such the present application under Section 378(4)CrPC is declined and accordingly, having no merit, the appeal also stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

20.02.2024
Anuradha

Whether speaking/reasoned : Yes/No
Whether reportable :Yes/No