

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-957-2019
Decided on 04.02.2025

Raj Kumar ... Applicant
VS.
Ankur Soni & Anr. ... Respondents

CRM-A-1673-2019

Rashmi Bansal ... Applicant
VS.
Ankur Soni & Anr. ... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Navjeet Singh, Advocate for the applicants

Sandeep Moudgil, J.

(1). This order shall dispose of the above cited two applications which are identical and interconnected. For the sake of order, CRM-A-957-2019 is treated as the lead case.

(2). This application has been filed under Section 378(4) CrPC for grant of leave to file appeal against the judgment dated 29.01.2019 passed by JMIC, Faridabad vide which respondent No.1 has been acquitted from the charges framed against him in a complaint under Section 138 of Negotiable Instruments Act, 1881 (in short, the NI Act).

(3). As per the averments made in the complaint, Respondent No.1 is said to have taken a friendly loan amount of Rs.3 lacs from the applicant and in discharge of his liability, he issued cheque No. 486849 dated 05.04.2016 in favour of the applicant, however, on presentation for its encashment, the same was returned with remarks "Funds insufficient". Thereafter the complainant served a statutory legal notice dated 25.04.2016 to respondent No.1 but the respondent No.1 did not come forward to pay a single penny and in this way

the respondent No.1 is said to have played a fraud upon the applicant/complainant as a result of which the present complaint was filed against the respondent No.1 under Section 138 of NI Act. The trial Court, after reading the evidence in entirety, came to the conclusion that the applicant/complainant failed to prove the loan transaction and vide its judgment dated 29.01.2019, the complaint under Section 138 of NI Act was dismissed. Aggrieved the applicant/complainant has approached this Court.

(4). Learned counsel for the applicant/complainant contends that respondent No.1 had not denied his signature on the cheque in issue and thus the presumption as to the liability of the respondent No.1 is very much proved. He further contends that the trial court has failed to consider the fact that the respondent No.1 took loan from the applicant and in lieu of which, he issued cheque to discharge his debt liability.

(5). It is then argued that the respondent No.1 has concocted the story of taking loan of Rs.6 lacs from the father of the applicant/complainant but before the trial court, he failed to bring on record any evidence to corroborate such bald assertion and he himself admitted that he issued cheque in discharge of his liability for Rs.6 lacs and the same were given to the applicant and his wife Rashmi Bansal for Rs.3 lakhs each.

(6). Heard learned counsel for the applicant.

(7). The trial Court observed that cheque Ex.C1 dated 05.04.2016 was dishonoured due to insufficient funds and the legal notice was issued calling upon the respondent No.1 to clear his debt liability within 15 days. It also observed that once the execution of cheque is admitted, the presumption of Sections 118 and 130 of the NI Act arises whereunder, it is provided that it

shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration and unless contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of whole or part of any debt or liability.

(8). It has come on record that the respondent No.1 in the present case, in order to rebut the presumption under Section 139 of the NI Act, has not stepped in the witness-box rather cross-examined the complainant wherein he categorically denied of having any friendly relations with the respondent No.1 supporting the plea of respondent No.1. It can be seen that the applicant/complainant failed to mention, anywhere, the exact date of advancing the loan and purpose of the loan and acquiesced the fact that the loan was given on the asking of his father.

(9). As regards the deposition of the complainant that he had advanced loan without interest to respondent No.1 did not find favour with the trial court and rightly so, that no prudent person could be expected to give a loan to the other person without interest moreso when the person whom he is advancing loan is not known or have friendly relations. Further, no receipt or document was executed for advancing loan of Rs.3 lacs nor is there any witness or evidence of any sort led before the trial court authenticating the date of advancing the loan and other averments made in the complaint and as such, the version of the applicant/complainant does not appear to be trustworthy.

(10). The way the complainant and his wife filed two separate complaint against respondent No.1 for an amount of Rs.3 lacs each and neither of them know the accused coupled with the fact that the respondent No.1 even lodged an FIR No.18 dated 06.01.2016 at PS Gharsana against the father of the

applicant, namely, Churiya Ram regarding the cheque in question, would show that there is some substance in the defence of the respondent No.1 that he took a loan of Rs.6 lakhs from the father of the applicant/complainant, who knowingly filed the present complaint through his son and his daughter-in law despite receiving the loan amount from the complainant.

(11). It is undeniable that the standard of proof required for rebutting the presumption is not so high as required for prosecution and same is rebuttable on the preponderance of probabilities. Further, to bring home the guilt of the accused under Section 138 of NI Act, the Court has to see whether all the ingredients of the section have been proved by the complainant beyond a reasonable doubt giving rise to a presumption in favor of the complainant and whether the accused has been able to rebut those presumptions by raising a probable defence. In the instant case, the applicant/complainant has not successfully proved all the ingredients of the offence and has miserably failed to rebut those presumptions even on preponderance of probabilities.

(12). Since the respondent No.1 has raised a probable defence and rebutted the presumption of Section 118 and 139 of the NI Act, the observation of the trial court that the applicant/complainant has failed to prove the loan transaction cannot be tinkered with particularly in view of the fact that criminal prosecution was also launched against the applicant's father on 06.01.2016 regarding non-returning of cheque allegedly issued by the respondent No.1 i.e. immediate after the allegation of advancing loan in January, 2016 was leveled by the applicant and his wife. Therefore, in such scenario, the trial court has rightly observed that the respondent No.1 owes no liability towards the applicant/complainant inasmuch as the cheque in question was never issued in

discharge of legally enforceable debt liability by the respondent No.1 towards the applicant/complainant.

(13). Thus, this Court is of the considered view that the judgment passed by the trial court dated 29.01.2019 is based upon proper appreciation of evidence led by the parties and the grounds culled out by the trial court cannot be said to be faulty. Since no infirmity has been found in the judgment of the trial court, this Court finds no reason to interfere with the same and as such, the judgment dated 29.01.2019 is upheld and the present leave to appeal stands dismissed.

(14). Ordered accordingly.

04.02.2025

V.Vishal

1. *Whether speaking/reasoned?*

2. *Whether reportable?*

(Sandeep Moudgil)
Judge

Yes/No

Yes/No