

(2007) 01 P&H CK 0047
In the Punjab And Haryana At Chandigarh

Raman Finance Corporation

APPELLANT

Vs

Harmeet Singh

RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Evidence Act, 1872 — Section 4

Negotiable Instruments Act, 1881 (NI) — Section 118, 138

Citation : (2007) 2 ALD(Cri) 5 : (2007) 3 BC 647

Hon'ble Judges : H.S. Bhalla, J; Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

1. This petition has been filed for leave to appeal to challenge acquittal of the respondent of the charge u/s 138 of the Negotiable Instruments Act, 1881.

2. Case of the complainant is that cheque bearing No. 627399 dated 8.11.2004 for an amount of Rs. 4,50,000/- was issued by the respondent in favour of the complainant, which was presented to the Banker but was dishonoured for insufficient funds. After serving notice and failure of the respondent to make the payment, complaint was filed.

3. Defence of the respondent was that the cheque had not been issued in discharge of his legal liability.

4. The Trial Court dismissed the complaint, holding that presumption that the cheque was issued by the accused in favour of the complainant in discharge of his liability, stood rebutted. The relevant finding is as under:

The complainant firm which is dealing in the business of finance must be maintaining some cash books, day books, party ledger books, etc. Further, more the CW1 in his cross-examination admitted that loans are advanced to the loanees through cheques by the complainant firm. However in the cross-examination he claimed that no cheque was issued to the accused. He further stated that no loan account of accused is maintained by the complainant firm. He claimed that only loan agreement with regard to the loan advanced to the

accused by the complainant firm was prepared. He further claimed that the loan agreement was returned to the accused at the time when the accused gave the cheques for the total amount of Rs. 17 lacs including the cheques involved in the present case. However, the complainant failed to produce any receipt regarding the delivery of the alleged loan agreement. I am of the considered view that the overall circumstances of the case are such that no documentary proof was made available to the accused of the complainant firm to rebut the legal presumption of which heavy burden casts on the accused. I am of the considered view that given the overall facts and circumstances of the case, the entire case of the complainant regarding the accused owing a legally enforceable debt to the complainant appears to be highly doubtful.

5. The Trial Court also held that the attorney was not a competent witness. Reliance was placed on judgment of the Andhra Pradesh High Court in K. Ramachandra Rao and Others Vs. State of A.P. and Another, and judgment of the Madhya Pradesh High Court in Mahendra Kumar Vs. Armstrong and Another,

6. Learned Counsel for the applicant challenged the view taken by the Trial Court that the attorney was not competent to depose, relying on judgment of this Court in Satnam Channan v. Darshan Singh 2006 (3) CCC 449, and judgment of Madras High Court in K. Gopalakrishnan v. Karunakarann 1 (2007) CCR 22 : 2 (2007) BC 327 : 2007(1) RCR 111

7. We find merit in the contention raised, for the reasons mentioned in the judgments relied upon. We will assume that attorney of the complainant was a competent witness. Still, we are unable to interfere with the finding that the respondent-accused rebutted the presumption that the cheque was for discharging legal liability, in view of the fact that the complainant did not produce any account in support of submission that loan was advanced to the accused. The complainant even failed to produce the loan agreement. In these circumstances, presumption in favour of the complainant stood rebutted. It is not required that the accused must lead positive evidence to rebut the presumption. Presumption could be rebutted from the circumstances on record. Reference may be made to a recent judgment of the Hon'ble Supreme Court in M.S. Narayana Menon @ Mani Vs. State of Kerala and Another, , wherein after taking into account the earlier judgments as well as Section 4 of the Evidence Act, the Hon'ble Supreme Court concluded as under:

Applying the said definitions of "proved" or "disapproved" to the principle behind Section 118(a) of the Act, the Court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.

8. The complainant, a businessman, could not plead that he had no accounts or documents to show advancement of loan. The plea that loan agreement had been returned to the accused, was unfounded. In any case, the Trial Court having recorded a finding that presumption of existence of enforceable liability was rebutted, even if two views are possible, the said finding is not liable to be disturbed in an appeal against acquittal.

For the above reasons, petition for leave to appeal is dismissed.