Rajiv Kumar Juneja vs State Nct Of Delhi & Anr on 9 July, 2024

Author: Manoj Kumar Ohri

Bench: Manoj Kumar Ohri

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 133/2024

RAJIV KUMAR JUNEJA
Through:

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STATE NCT OF DELHI & ANR
Through:

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

% 09.07.2024

1. By way of present petition/application, the petitioner seeks leave to appeal against the judgement of acquittal dated 14.12.2023 passed by learned MM, NI Act, East, Karkardooma Courts, Delhi in Complaint Case No. 435/2021 instituted under Section 138 of the Negotiable Instruments Act, 1881 („NI Act), titled as "Kumar Juneja vs Mahendra Lal".

2. The facts, necessary for adjudication, are that the respondent No.2/accused purchased readymade garments from the petitioner/complainant, which were supplied to him on credit basis. As per petitioner s ledger, garments amounting to Rs.16,53,711/- had been provided to respondent No.2. In discharge of the aforesaid liability, respondent No.2 issued a cheque bearing No.004813 dated 31.12.2020 drawn on Axis Bank, New Delhi („subject cheque). The said cheque, when presented for encashment, was returned dishonoured with the remark „funds insufficient vide return memo dated 01.01.2021. A legal demand notice This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 26/07/2024 at 21:19:26 dated 14.01.2021 came to be issued to respondent No.2 and upon his failure to repay the amount under the cheque, the present complaint case came to be filed.

3. The learned MM, after considering the evidence on record as well as the arguments advanced by the parties, passed the impugned judgement wherein it was noted that the accused had managed to

rebut the presumption under Section 139 read with Section 118 NI Act, by creating doubts in the case of the petitioner and showing that he did not owe any liability to pay under the subject cheque.

4. Learned counsel for the petitioner contends that the impugned judgement has been passed without due consideration of the facts and circumstances of the case. It is stated that the learned MM erred in concluding that the petitioner had failed to place on record in support of the fact that business relations existed between him and respondent No.2. It was further submitted that respondent No.2 had failed to establish his defence as regards the misplacing of the cheque inasmuch as no evidence to support the aforesaid contention was placed before the learned MM. Lastly, it is contended that the learned MM erred in shifting the burden of proof from respondent No.2 to the petitioner, in an unreasonable manner.

5. I have heard learned counsel for the petitioner and have also perused the material placed on record.

6. Before proceeding to deal with the merits of the case, this Court deems it fruitful to restate the legal position regarding offences under Section 138 NI Act.

An offence under Section 138 NI Act is made out when the conditions stipulated in the proviso to Section 138 are satisfied. The first condition is This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 26/07/2024 at 21:19:26 that the cheque, which has been drawn on an account maintained by the drawer, ought to be presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. The second condition is that the payee or the holder in due course of the cheque, as the case may be, must make a demand for the said money by giving a notice in writing to the drawer of the cheque within 30 days of receiving the information from the bank regarding the dishonour of the cheque. The third condition states that there should be a failure on the part of the drawer of cheque to make the payment of the amount under the cheque to the payee or the holder in due course, as the case may be, within 15 days of the receipt of the said notice. When all these three conditions are fulfilled, then only an offence under Section 138 of the NI Act can be said to have been committed by the person issuing the cheque [Ref: MSR Leathers v. S. Palaniappan & Anr.1, Charanjit Pal Jindal v. L.N. Metalics2 and N. Harihara Krishnan v. J. Thomas3.]

7. In the impugned judgement, it has been noted that respondent No.2, both at Section 251 Cr.P.C. stage as well as in his statement under Section 281/313 Cr.P.C. has admitted that the subject cheque bears his signature. Further, the cheque has been drawn on the account maintained by respondent No.2. Considering these facts (alongside the other relevant considerations), the learned MM noted that presumption under Section 139 read with Section 118 NI Act came into effect and that it was upon respondent No.2 to rebut the same.

In his defence, respondent No.2, while acknowledging that he had (2013) 1 SCC 177 (2015) 15 SCC 768 (2018) 13 SCC 663 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 26/07/2024 at 21:19:27 friendly relations with the petitioner, denied having purchased any ready- made garments from him. It was contended that the subject cheque had been misplaced from his shop and that the same had been misused by the petitioner. In support of his contention, respondent No.2 relied heavily upon the cross-examination of the petitioner, wherein several inconsistencies existed, rendering the case of the petitioner highly improbable.

8. The learned MM, while passing the impugned judgement, undertook a detailed analysis of the contention raised by the parties and in regard, placed heavy reliance upon the cross-examination of both the petitioner and respondent No.2.

Insofar as the case of the petitioner was concerned, it was observed that though in his evidence affidavit (and demand notice), it had been stated that respondent No.2 had purchased goods from 01.04.2020 to 12.01.2021, however, in his cross-examination, the petitioner stated that the first business transaction had taken placed on 22.12.2020. At the same time, it had also been stated that entire transaction (forming the basis for issuance of the subject cheque) had taken place within a period of 10 days, which facts was again inconsistent with the facts mentioned in the evidence affidavit as well as demand notice. As regard the placing of orders by respondent No.2, while the petitioner had contended that the same had been placed verbally, however, it was observed that no record/document had been placed on record, which would support the aforesaid factum of placement of orders. While the petitioner sought to place reliance upon certain invoices relating to the orders, however, the same having not been exhibited, could not be considered as evidence and taken into account. It was also observed that even otherwise, the aforesaid invoices did not bear the signature of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 26/07/2024 at 21:19:29 respondent No.2 and thus could not be relevant as evidence. As regard the delivery of goods, it was observed that the petitioner had taken four completely contradictory stands, which raised serious doubts upon the actual factum of delivery. Lastly, the petitioner also sought to heavily rely upon the ledger account maintained by him, however, the same was not exhibited and further, even though the same was computer generated, it was not supported by Section 65B certificate.

Insofar as respondent No.2 s contention relating to misplacing (and misuse) of the subject cheque is concerned, it was observed that the aforesaid contention taken by respondent No.2 in his evidence as DW1, was more in the nature of a „possibility or probability rather than a specific claim or allegation. Further, it was observed that in his cross-examination, respondent No.2 had stated that he did not remember in which year the subject cheque had been misplaced and that he had neither filed any police complaint nor issued any direction to his bank as regards the misplacing of the said cheque.

9. After noting the aforesaid, the learned MM held that the ingredients for the offence under Section 138 NI Act were not fulfilled and that respondent No.2 had managed to rebut the presumption

raised against him by raising several doubts in the case of the petitioner.

10. The legal position as regards presumption raised under Section 139 read with Section 118 NI Act and its rebuttal has been succinctly put by the Supreme Court in the case of Basalingappa v. Mudibasappa4. It was observed that:-

> "xxx (2019) 5 SCC 418 This is a digitally signed order.

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25. We having noticed the ratio laid down by this Court in the above cases on Sections 118 (a) and 139, we now summarise the principles enumerated by this Court in following manner:

> 25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability. 25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.
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> 25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence.

Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come in the witness box to support his defence.

xxx"

> 11. In light of the settled legal position and the entire factual situation as enumerated in the impugned judgement and reiterated hereinabove, this Court finds no illegality or infirmity in the judgement passed by the learned MM. While respondent No.2 s contention regarding the misplacing and misuse of cheque remained unsubstantiated, however, at the same time, respondent No.2 had been able to show several material inconsistencies or contradictions in the case of the petitioner qua the aspect of existence of This is a digitally signed order.
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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC

Server on 26/07/2024 at 21:19:31 business relations, the placing of the order as well as delivery of the aforesaid orders. Even the invoices as well as ledger maintained by the petitioner, which would have been crucial evidence, could not be rightly relied upon as the same were not exhibited and further, the ledger being computer-generated was not supported by Section 65B certificate. Thus, respondent No.2 had been able to prove its defence on „preponderance of probabilities and in the absence of the petitioner being able to provide any further evidence to substantiate his case, respondent No.2 s acquittal is justified.

12. Further, a decision of acquittal, strengthens the presumption of innocence in the favor of the accused. At the same time, the appellate court, while considering a leave to appeal, has a duty to satisfy itself if the view taken by the trial court is both possible and plausible. The appellate court should be slow in reversing an order of acquittal passed by the trial court.5 The principles guiding the Court in such situations has been succinctly delineated by Supreme Court in Anwar Ali & Anr. v. State of Himachal Pradesh6 in the following terms:-

"xxx 14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in para 20 of the aforesaid decision, which reads as under: (Babu case [Babu v. State of Kerala, (2010) 9 SCC 189)] "20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of Jafarudheen & Ors. v. State of Kerala, (2022) 8 SCC 440, (2020) 10 SCC 166 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 26/07/2024 at 21:19:32 evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635], Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312], Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665], Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501], Arulvelu [Arulvelu v. State, (2009) 10 SCC 206] and Gamini Bala Koteswara Rao v.

State of A.P. [(2009) 10 SCC 636]"

xxx"

13. In view of the aforesaid discussion, this Court finds no ground to grant leave to appeal. Consequently, the leave petition is dismissed.

MANOJ KUMAR OHRI, J.

JULY 9, 2024 rd This is a digitally signed order.