Ved Prakash vs M/S Hina Investment Pvt. Ltd on 30 March, 2022

IN THE COURT OF SUDHANSHU KAUSHIK :
ADDITIONAL SESSIONS JUDGE/SPECIAL JUDGE (NDPS) :
WEST DISTRICT : TIS HAZARI COURTS : DELHI

IN THE MATTER OF :-

CNR No.DLWT01-001172-2020
CRIMINAL APPEAL No.53/2020

VED PRAKASH,
S/O SH. GHASI RAM,
R/O N-2/97, MOHAN GARDEN,
UTTAM NAGAR, NEW DELHI-110059.
OLD RESIDENCE :
N-3/26B, MOHAN GARDEN,
UTTAM NAGAR, NEW DELHI-110059

.....APPELLANT

VERSUS

M/S HINA INVESTMENT PVT. LTD.
OFFICE AT T-6, SUPER MARKET,
NEW MOTI NAGAR, NEAR MILAN CINEMA,
NEW DELHI

.....RESPONDENT No.1

THE STATE (GOVT. OF NCT OF DELHI)

.....RESPONDENT No.2

DATE OF FILING OF APPEAL : 14.02.2020
DATE OF CONCLUSION OF ARGUMENTS : 23.03.2022
DATE OF PASSING OF ORDER : 30.03.2022

ORDER

1. By means of present appeal, Ved Prakash (hereinafter referred to as 'appellant') has challenged the judgment dated 11.10.2019 and order on sentence dated 01.02.2020 passed by the Metropolitan Magistrate (NI Act)- 04, West District, Tis Hazari Courts, Delhi whereby he was held guilty of committing offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act') and sentenced to undergo simple imprisonment for a period of one month with directions to pay fine of Rs.1,05,000/- (Rupees Three Lakhs Eight Five Thousand only). The Trial Court further directed that the fine imposed shall be payable as compensation to M/s Hina Investment Private Limited Company (Respondent No.1) and in default of payment of compensation, the appellant shall undergo simple imprisonment for a period of one month. The State has been impleaded as Respondent No.2.

2. Brief facts of the case as revealed from the Trial Court Record are that respondent No.1 is a Private Limited Company engaged in money lending business. On 10.04.2013, appellant obtained a

loan for sum of Rs.80,000/- from respondent No.1 for a period of six months and executed a loan agreement on a stamp paper. Towards repayment of loan, appellant issued a cheque bearing No.134602 dated 10.10.2013 for sum of Rs.80,000/- drawn on State Bank of India, Moti Nagar, New Delhi but the cheque was dishonoured and returned by the banker with remarks 'Funds Insufficient' and thereupon, respondent No.1 served a legal demand notice dated 06.11.2013 on the appellant but he failed to make the payment and consequently, respondent No.1 filed a criminal complaint under Section 138 of the Act through its Director Sh. Sat Pal Luthra.

3. The Trial Court recorded pre-summoning evidence and summoned the appellant vide order dated 04.02.2015. After appearance, notice under Section 251 of Cr.P.C was served on the appellant to which he pleaded not guilty and claimed trial. During trial, respondent No.1 examined only one witness i.e. CW-1/Sh. Sat Pal Luthra, Director of M/s Hina Investment Private Limited Company. He was cross examined by the appellant. The Trial Court closed the complainant's evidence and recorded the statement of appellant under Section 313 Cr.P.C. The appellant did not lead evidence and DE was closed. Final arguments were heard and the appellant was held guilty.

4. Notice of the appeal was issued to the respondents. Respondent No.1 contested the petition by putting his appearance through counsel but did not choose to file written reply.

5. Rival submissions were heard.

6. Counsel for the appellant has challenged the judgment of the Trial Court arguing that the same is based on surmises and conjunctures. Counsel has submitted that the evidence was not sufficient to record a finding of conviction. Counsel has mentioned that the Trial Court did not appreciate that respondent No.1 failed to establish that the cheque was issued towards discharge of legal liability. He has mentioned that there is an inordinate delay between the period when the alleged stamp paper was purchased and the loan was disbursed to the appellant. He has mentioned that the stamp paper was purchased on 15.01.2013 but the loan agreement was reduced in writing on 04.04.2013 and there is no explanation for the delay. He has disputed the signatures of the appellant on the stamp paper mentioning that the manner in which the same have been shown to be made by the appellant creates doubt over their authenticity. He has argued that respondent No.1 was not authorized to do money lending business.

7. Counsel has contended that the Trial Court failed to appreciate that appellant never took loan from respondent No.1. He has argued that Trial Court ignored the version of the appellant that he took loan from a person name Bansi, who used to work in a concern named M/s Sunny Auto. He stated that appellant handed over a blank signed cheque to Bansi at the time of obtaining loan. He mentioned that Bansi took the signatures of the appellant on a blank stamp paper. He argued that Bansi handed over the signed stamp paper and cheque to respondent No.1. He has argued that Trial Court failed to take note of the fact that the loan agreement has not been notarized by a Notary Public and there was no witness to the loan agreement. He has argued that the story of respondent No.1 that cash loan was given to the appellant is highly improbable. He has mentioned that as a usual practice, the loan amount is always transferred in the bank account of a customer and it is never disbursed in cash. He has contended that the Trial Court failed to take into account that the

transaction of cash loan was forbidden by the Income Tax Act. Counsel has submitted that the judgment and the order on sentence are not legally sustainable and the same should be set aside.

8. On the other hand, Counsel for respondent No.1 has contended that the judgment of the Trial Court is a reasoned judgment. He has contended that the line of defence taken by the appellant was taken into account by the Trial Court but the same was rejected. He has mentioned that the Trial Court arrived at a finding that the defence raised by the appellant is unbelievable. He has argued that the appellant had been taking inconsistent pleas of defence. He has contended that appellant concocted a false story which was rightly rejected by the trial court. He has mentioned that there is no merit in the appeal and the same deserves to be dismissed.

9. I have gone through the record in the light of respective arguments.

10. The main thrust of arguments of the appellant has been that there was no legally enforceable debt for which the cheque in question was issued. Counsel for the appellant has submitted that the appellant did not take loan from respondent No.1. He has mentioned that the appellant took a loan of Rs.40,000/- from Bansi and repaid the same on time. He has propagated a story that at the time of taking this loan, appellant handed over the cheque in question as security. Counsel has mentioned that appellant repaid the loan but Bansi did not return the cheque. He has stated that Bansi handed over the cheque to respondent No.1, who misused it by making alterations therein and presented it to his banker. I have gone through the impugned judgment. This line of defence was taken by the appellant during trial and the same was rightly rejected by the Trial Court.

11. In order to conclude that the cheque in question was issued towards discharge of liability, the Trial Court has relied on the presumption provided under Section 139 of the Act. Section 139 of the Act provides a presumption in favour of holder of a cheque. It mandates that it shall be presumed, unless contrary is proved, that a holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or any other liability. The presumption under Section 139 of the Act is a legal presumption that the cheque was issued for discharging an antecedent liability, however, it is a rebuttable presumption and the person issuing the cheque is at liberty to rebut it. Similarly, Section 118 of the Act provides a presumption that until the contrary is proved, it shall be presumed that the negotiable instrument was drawn for a consideration and the holder of negotiable instrument is the holder in due course. The Apex Court has held in "Rangappa Vs Shree Mohan" 2010 (V) AD SCC 565 that the presumption mandated by Section 139 of the Act does indeed include the existence of legally enforceable debt and liability.

12. In the present matter, at the time of framing of notice, appellant admitted his signatures on the cheque. He presented defence that he handed over the cheque to Bansi as security for the loan. During trial, he again admitted his signatures on the cheque in the testimony recorded by the trial court. In view of this admission, I find no fault in the line of reasoning taken by the Trial Court that the cheque was issued towards discharge of liability. The Apex Court has held in "Hiten P. Dalal Vs Bratindranath Banerjee", AIR 2001 SCC 3897 that Section 139 of the Act introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on the accused. The court further observed that it is a presumption of law and does not conflict with the presumption of

innocence. The court held that the presumption available under Section 139 of the Act can be rebutted by the accused by adducing evidence. In the present matter, the proved set of circumstance does give rise to the presumption under Section 139 of the Act that the respondent received the cheque towards discharge of legally enforceable debt. In view of this, it was for the appellant to rebut the said presumption but he failed to do so.

13. It has been held by the Supreme Court in "Kumar Exports Vs Sharma Carpets" 2009 2 SCC 513 that in a trial of 138 of the Act, the accused has two options; firstly, he can either show that consideration and debt did not exist; and secondly, that under the particular circumstance of the case, the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. The court held that to rebut the statutory presumption, it is not expected from the accused to prove his defence beyond reasonable doubt as it is expected in a criminal trial. It was held that accused may adduce direct evidence to prove that the cheque in question was not supported by consideration and there was no debt or liability to be discharged by him, however, the court need not insist in every case that the accused should disprove the existence of consideration and debt by leading direct evidence because existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that fair denial of the consideration, apparently would not serve the purpose of accused. It was held that something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. The court observed that in order to disprove the presumption, accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and the debt did not exist or their non-existence was so probable that a prudent man would, under the circumstance of the case, act upon the plea that they did not exist. This principle has been reiterated by the Apex Court in "Rohit Bhai Jivan Lal Patel Vs State of Gujarat" 2019 SCC Online Supreme Court 389.

14. In "Hiten P Dalal's case" (supra), the Apex Court held that;

> ".....Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exit or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'.
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> In the case of discretionary presumption, the presumption if drawn may be rebutted by an explanation which might reasonably be true and which is consistent with the innocence of the accused. On the other hand, in the case of a mandatory presumption, the burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under Section 114 of Evidence act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words "unless the contrary is proved" which occur in this provisions made it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible".

15. In the light of the law laid down by the Hon'ble Supreme Court, what needs to be considered is whether the accused has been able to present preponderance of probabilities in support of his defence. In the present matter, respondent No.1 produced the loan agreement dated 04.04.2013 wherein it stands recorded that appellant had obtained a loan of Rs.80,000/-. The loan agreement has been executed on a stamp paper and the same has also been notarized. This loan agreement bears the signature of appellant at three places. The appellant did not dispute his signatures during trial. The cheque duly signed by the appellant in itself was sufficient to raise the presumption of a legally enforceable debt. However, in the present matter, in addition to the cheque, respondent No.1 produced a loan agreement bearing the signatures of the appellant. In case, the appellant wanted to establish that the loan agreement did not bear his signatures, he could have lead evidence to establish this fact but he chose not to tender any evidence in this regard. He took evasive pleas about the loan agreement just to wriggle out of his liability but he has miserably failed to do so.

16. The Trial Court has correctly arrived at a conclusion that appellant failed to rebut the presumption under Section 139 of the Act. The appellant has argued that respondent No.1 had no authority for doing money lending business. The said plea was taken into account by the Trial Court in para No.23 of the impugned judgment. The respondent No.1 produced the certificate of registration Ex.CW1/11 whereby it was authorized to lend money. In view of this, the argument challenging the authority of respondent No.1 to do money lending business becomes erroneous. The Trial Court further observed that in Form No.32 (Ex.CW1/2), Satpal Luthra has been shown as Director of respondent No.1 and as per the resolution deed (Ex.CW1/1), he has been authorized to pursue the criminal proceedings. In these circumstances, the defence of appellant challenging the authority to give loan is a lame excuse. The appellant has failed to impeach the credit worthiness CW-1.

17. I have gone through the detailed cross-examination of this witness. The appellant has failed to bring out any fact during cross-examination, which may put question mark over the reliability of this witness. Further, the cross- examination of the witness shows that appellant did not put even a single suggestion to him that the cheque was not towards the discharge of legal liability. In view of this, the testimony of the respondent, qua the aspect of loan, had gone unrebutted. The Trial Court rightly observed that the appellant has failed to rebut the presumption under Section 139 of the Act during the cross-examination of the respondent.

18. The appellant was under an obligation to rebut the presumption under Section 139 of the Act by demonstrating that there was some substance in the defence set up by him. Record indicates that during trial, the appellant took inconsistent and contradictory pleas. At the time when notice was framed, he came up with a version that he had taken a loan of Rs.50,000/- from M/s Sunny Auto. He mentioned that at the time of taking this loan, he signed a bond for the loan amount. He denied having taken the loan of Rs.80,000/- from respondent No.1. He mentioned that he does not know how the cheque in question came in possession of respondent No.1. However, during trial, he abandoned this line of defence and came up with a new version that he took a loan of Rs.40,000/- from Bansi, who used to be an employee of respondent No.1. He presented defence that he handed over the cheque in question as security to Bansi, who did not return it even after repayment of loan. He mentioned that Bansi obtained his signatures on blank documents. In the statement recorded

under Section 313 Cr.P.C, he came up with yet another version that Bansi was employee of M/s Sunny Auto. In view of these inconsistent pleas, the Trial Court rightly rejected the line of defence taken by the appellant.

19. The defence raised by the appellant during trial is improbable and unbelievable. He came up with the version that even after repayment of the loan, the cheque kept lying with Bansi. In such like cases, it would be the conduct of an ordinary prudent man that he would immediately initiate some action or atleast, he would issue stop payment directions to his bank to ensure that the cheque is not misused. The appellant did not lodge any complaint against Bansi either with the police or in the court. The fact that the cheque in question was dishonoured for insufficient funds goes on to show that no such instruction was ever issued by the appellant. This further highlights the fact that the defence raised by the appellant was sham.

20. There appears to be no content in the arguments of the appellant that the loan agreement was blank at the time when it was handed over to respondent No.1. I have perused the loan agreement (Ex.CW1/12). The loan agreement bears the signatures of the appellant at three places including the one over the revenue stamp. The signature of appellant over the revenue receipt would not have been possible, in case, it would be made on a blank paper. The Trial Court has rightly appreciated this fact and rejected the plea of the appellant.

21. The appellant set up a defence during trial that the cheque in question was only signed by him and the other details were left blank. Section 20 of the Act deals with inchoate stamped instruments. As per this provision, if a person gives duly signed but a blank or partly written cheque, he deem to have given implied authority to the holder to fill up the particulars in it and complete it and thus make him liable for the payment mentioned in it. Hence, cheque partly written or blank but signed by the account holder and the rest is filled up by another is valid one. Supreme Court has held in "Suryalakshmi Cotton Mills Ltd. Vs M/s. Rajvir Industries Ltd." 2008 II AD (SC) 381 that filling up of the blanks in a cheque by itself would not amount to forgery.

22. I have perused the cheque in question, which is lying on the Trial Court Record. Apparently, the entire cheque, including the signatures of the appellant, are in the same ink and in the same handwriting. The cheque even bears the signatures of the appellant on the back side with the same ink. The appellant could have brought evidence to show that the details filled in the cheque were not in his handwriting but he made no effort to bring evidence to establish this fact. He did not tender any explanation whatsoever as to why the signatures were made by him even on the back side of the cheque. This circumstance goes on to show that the defence raised by the appellant is false and it was an afterthought.

23. Appellant has taken certain new pleas in appeal, which were never taken by him during trial. He came up with the version that it was highly improbable that the loan amount was disbursed in cash as it was against the usual business practice. He mentioned that the disbursal of the cash loan was forbidden by the Income Tax Act. These pleas deserve to be rejected as the same have been taken for the first time only during the appeal.

24. In view of discussions made in the aforesaid paras, I find no infirmity in the judgment of the Trial Court. The Trial Court has rightly held the appellant guilty of committing offence punishable under Section 138 of the Act. As regards to the quantum of sentence awarded to the appellant, the offence under Section 138 of Negotiable Instruments Act is punishable with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of cheque or with both. Record shows that respondent has been pursuing the complaint for the last eight years. He must have incurred expenses on engaging counsel and attending the court proceedings. In view of this, the sentence awarded by the Trial Court already appears to be on lower side and does not warrant any interference. The criminal appeal has no merit and the same stands dismissed. Appellant be taken into custody immediately to undergo the sentence awarded by the Trial Court.

25. Copy of this order be supplied to the appellant against acknowledgement.

26. The Trial Court Record along with the copy of this order be sent back to the Trial Court for information.

27. Appeal file be consigned to Record Room after completion of necessary formalities.

Announced in the open court on 30th March, 2022 (Sudhanshu Kaushik) Additional Sessions Judge, West District, Tis Hazari Courts, Delhi 30.03.2022