

IN THE HIGH COURT OF HIMACHAL PRADESH  
SHIMLA

Cr. Revision No. 327 of 2018  
Reserved on: 27.8.2019  
Decided on : 30.8.2019

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Parvesh Soni	Versus	...Petitioner.
State of H.P and another		....Respondents.

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Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

Whether approved for reporting?<sup>1</sup> Yes.

For the Petitioner:                      Mr. N.K Tomar, Advocate.

For the Respondents:                      Mr. Hemant Vaid, Mr. Hemanshu Mishra, Additional Advocate Generals with Mr. Yudhveer Singh Thakur and Mr. Vikrant Chandel, Deputy Advocate Generals, for respondent No.1.

Mr. Dalip K Sharma, Advocate, for respondent No.2.

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Sureshwar Thakur, Judge

The instant appeal, is, directed against the concurrently recorded verdict(s), against, the appellant herein (for short" the accused"), by both the Courts below i.e learned Additional Chief Judicial Magistrate, Kasauli, District Solan,

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<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

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H.P, in, complaint No. 12/3 of 2017, and, learned Additional Sessions Judge-II, Solan, in, Criminal Appeal No. 18ASJ-II/10 of 2018, (a) wherethrough he stood convicted, for, a charge under section 138 of the Negotiable Instruments Act, and, also consequentially, stood sentenced, to, undergo simple imprisonment, for, a period of six months, and, also stood directed to pay compensation borne, in, a sum of Rs.6,00,000/-, and, in breach of payment of compensation, he stood further sentenced, to, undergo simple imprisonment, for, a period of one month.

2. Two negotiable instruments, each carrying a sum of Rs.3,00,000/-, and, respectively borne in Ex. C-3 and, in Ex. C-4, were issued by the accused, vis-a-vis, respondent No.2 herein/complainant (for short “the complainant”), (i) and, upon the latter presenting the afores’ before the banker concerned, both, through memorandums, comprised in Ex. C-5, and, Ex. C-6, rather stood declined to be honored, (ii) obviously, for, insufficient funds, in, contemporaneity, vis-a-vis, their

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presentation, before the banker concerned, hence existing, in, the accounts of the accused, (iii) necessarily, the, holder of the afore negotiable instruments, in as much, as, the complainant, is leveraged, with, the statutory presumption, embodied in section 139 of the Negotiable Instruments Act, and, provisions whereof stand extracted hereinafter, (iv) and, when in his holding the afore negotiable instruments, he is to be statutorily concluded to be, holding it, in, discharge of, a, legally enforceable debt, or, other legal liability, subsisting inter-se both, (v) and, though the afore presumption, is, rebuttable, nonetheless for the reasons, to be ascribed hereinafter, the afore statutory leverage, working, vis-a-vis, the complainant, acquires both tenacity or force, (vi) reiteratedly also, upon, its remaining unrebutted, given non-adduction, of, apposite discharging evidence, hence by the accused, whereupon this Court, is, constrained, to, affirm the concurrently recorded verdicts made, upon, the accused.

“139. Presumption in favour of holder-It shall be presumed, unless the contrary is proved

that the 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 debtor other liability.”

3. The accused, had, for discharging the onus of adducing firm rebuttal evidence, for, eroding the effect, of, the afore statutory presumption, hence, meted suggestion(s), to, the complainant, rather holding echoings qua his wife (DW-2 Poonam Soni) running committees, alongwith the complainant, (i) and, hers investing money(s) therein, besides also echoings, qua, in consequence of the afore joint business, operated, by the complainant, and, the wife, the latter issuing signed blank cheques, cheques whereof rather coming to be misused by the complainant, (ii) and, thereupon, an, espousal is made qua the amount(s) borne, in the negotiable instrument not working towards any legally enforceable debt or other liability validly subsisting, inter-se, the complainant, and, the accused. However, all the afore suggestions, stood denied, by the complainant.

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4. Be that as it may, the afore espousal, is, eroded, vis-a-vis, its vigor, given DW-2, wife of the accused, in, her cross-examination, acquiescing to a suggestion meted to her, qua hers not being employed, and, thereafter rather, with hers' voluntarily deposing qua hers making earnings, from, tuitioning children, (i) thereupon also, when she failed to adduce firm documentary evidence, vis-a-vis, hers investing money alongwith the complainant, in, the afore joint business, as, conducted by them, (ii) and, predominantly, when, the signatures and all scribings, made, on the dishonored negotiable instruments, are, not contested by the accused, (iii) thereupon, the effect(s) of all the afore unfoldings borne in the records, is qua, the accused, being disabled, to, make any address, before this Court, qua his issuing blank cheques to the complainant, (iv) and, nor he can make any submission before this Court, qua sums of money borne therein, being suo motu scribed by the complainant, besides obviously, he cannot make any espousal before this Court, qua, the afore

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dishonored instruments being either misused, or, being merely issued as security, (v) and, obviously also he cannot contend qua the statutory presumption, vis-a-vis, the holder of the cheques qua his hence holding them, in discharge, of, a legally enforceable debt, subsisting, or, existing, inter-se, both, hence, coming to be rebutted.

5. In view of the above, there is no merit in the petition, and, the same is accordingly dismissed. The impugned verdicts of conviction, and, the order of sentence, are, maintained and affirmed. However amount, if any, deposited by the accused, either before the Courts below, or, before this Court, be adjusted against the compensation amount imposed upon him. Records be sent back.

All pending applications stand disposed of accordingly.

30<sup>th</sup> August, 2019  
(priti)

( Sureshwar Thakur ),  
Judge.