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2019 PLRonline 3308

SUPREME COURT OF INDIA

A.M. KHANWILKAR, J. DINESH MAHESHWARI, J.

Womb Laboratories Pvt Ltd v. Vijay Ahuja

CRIMINAL APPEAL NOS.1382-1383 OF 2019 (Arising out of SLP(Crl.) Nos.1365-1366/2019)

11.09.2019

Negotiable Instruments Act, 1881 S. 138 - Security cheque - Handing over of the cheques by way of security per se would not extricate the accused from the [discharge](#) of liability arising from such cheques - Complaint does indicate that the signed cheques were handed over by the accused to the complainant - The cheques were given by way of security, is a matter of defence - It was not for the discharge of any debt or any liability is also a matter of defence - The relevant facts to countenance the defence [will](#) have to be proved that such security could not be treated as debt or other liability of the accused - That would be a triable issue.

ORDER

1. Leave granted.
2. These appeals take exception to the [judgment](#) and Order dated 23rd July, 2018 passed by the High Court of Delhi at New Delhi in Crl.M.C. Nos. 3084/2015 and 3086/2015 whereby the proceedings initiated against respondent No.1 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 came to be quashed.
3. The High Court mainly referred to the assertion in the complaint that the security cheques were demanded in response to which the accused had issued three signed blank cheques and stated if the amount is not returned within two years then by presenting the cheques the same may be encashed. This assertion was assumed by the High Court to mean that the cheques were given only by way of security. Having said that, the High Court proceeded to hold that the "security" offered was not for the discharge of any debt or any liability. Resultantly, it came to hold that the action under Section 138 of the Negotiable Instruments Act, 1881 cannot proceed against the accused any further.
4. We have heard counsel for the parties.
5. In our opinion, the High Court has muddled the entire issue. The averment in the complaint does indicate that the signed cheques were handed over by the accused to the complainant. The cheques were given by way of security, is a matter of defence. Further, it was not for the discharge of any debt or any liability is also a matter of defence. The relevant facts to countenance the defence will have to be proved - that such security could not be treated as debt or other liability of the accused. That would be a triable issue. We say so because, handing over of the cheques by way of security per se would not extricate the accused from the discharge of liability arising from such cheques.
6. Suffice it to observe, the impugned judgment of the High Court cannot stand the test of judicial scrutiny. The same is, therefore, set aside.
7. As respondent No.1 has raised other contention(s) in the [quashing](#) petition, we deem it appropriate to relegate the parties before the High Court for examining those grounds on its own merits in accordance with law.
8. Counsel for the appellant pointed out that in view of the changed legal position, the complaint must now proceed before the Court at Ahmedabad. Even this contention may be pursued before the High Court in the remanded proceedings, which may be dealt with appropriately.
9. The appeals are disposed of in the above terms.

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