IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-116-SBA-2001 (O&M)
Date of decision:- August 26, 2015

Dr. Daya Krishan Jain

.....Appellant..

Vs.

Usha Rani

....Respondent..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Vishal Khatri, Advocate
for the appellant.

Mr. Sukhwinder Singh Sudan, Advocate,
Amicus Curiae for respondent.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

JASPAL SINGH, J.

The present appeal has been preferred by Dr. Daya Krishan Jain against the judgment of acquittal dated August 10, 2000 passed by Chief Judicial Magistrate, Sangrur, in criminal complaint No. 5 of 05.02.1996, captioned as ***"Dr. Daya Krishan Jain vs Ms. Usha Rani"***, under Section 138 of the Negotiable Instruments Act (for short, "Act")

2. The facts giving rise to the instant lis are that Usha Rani-respondent had borrowed a sum of ₹1 lac from the complainant and returned the same amount vide cheque No.559044, dated 28.11.1995. Accordingly,

complainant presented the cheque for realization of amount in the State of Bank of India on 23.12.1995 but the same was returned with remarks "insufficient funds" on 02.01.1995. On 16.01.1996, complainant sent notice through his counsel Sh. Yogesh Gupta, Advocate, which was duly received by the respondent-accused but neither she replied the notice nor made the payment to the complainant. Thus, complainant was constrained to lodge complaint in the Court of ld. Jurisdictional Magistrate.

3. On the strength of preliminary evidence adduced by complainant-Daya Krishan Jain, respondent-accused was summoned to face trial under Section 138 of the Act and after securing her presence, complaint was listed for pre-charge evidence, during which, complainant examined Baghel Singh as PW-1, Daya Krishan-complainant as PW2, Sh. Navdeep Gupta as PW3, Jarnail Singh as PW-4 and closed the evidence.

4. On conclusion of the complainant's evidence, when incriminating circumstances appearing in it were put to respondent-accused for eliciting her explanation as required under Section 313 Cr.P.C., she alleged the case as false. She admitted that she has an account in the State Bank of India, Sangrur but she denied the receipt of notice. In her defence, accused has examined as many as three witnesses and closed the evidence.

5. After hearing learned counsel for the parties, accused-respondent was acquitted of the charge holding that complainant has failed to establish that the amount is recoverable from the accused. Therefore, the cheque in question cannot be deemed to have been issued for discharge of any debt or any other liability, vide impugned judgment dated August 10, 2000.

6. Feeling dissatisfied against the acquittal of respondent-accused, applicant-complainant preferred instant appeal challenging the judgment/order of acquittal dated August 10, 2000.

7. While assailing impugned judgment of acquittal dated August 10, 2000, it has been ebulliently argued by learned counsel for appellant that same is absolutely against the evidence available on file and settled canons of law. Ld. trial court has ignored and disbelieved the cogent and trustworthy evidence adduced by complainant. Ld. trial court has acquitted the accused only on the basis of small discrepancies that the complainant has failed to establish the amount recoverable from the accused and the cheque in question cannot be deemed to have been issued for discharge of any debt or any other liability. Rather, it can be said that mis-appreciation of evidence has resulted into miscarriage of justice. The minor contradictions have given much importance, which were otherwise negligible. Acquittal of respondent is absolutely against the evidence available on file and is unjustified. There are sufficient grounds for permitting appellant to prefer an appeal against the judgment/order of acquittal.

8. This Court has given an anxious thought to the submission made by learned counsel for applicant and has scrutinized the impugned judgment but finding the same to be of no legal substance.

9. At the very outset, it would be apt and proper to reproduce para 19 of the impugned judgment, which contains the reasons to reach at a conclusion that the complainant has failed to establish the requisite ingredients which constitute an offence under Section 138 of the Act. Para 19 reads as under:

> *"I would not like to repeat the portion of the statement of Dr. Daya Kishan (PW-2) which had already been mentioned in this judgment. Suffice is to say that the complainant was supposed to know atleast the month or date when the amount was lent by him to the accused. No mode of payment of money was either mentioned in the complaint (or established on the file either through the pronote, draft or through cheque). The complainant as PW-2 admitted that the interest @ 1 ½ % per month was settled. It is not understandable as how the cheque or only Rs.1 lac (the actual amount) was received by the complainant, or the contents were filed to this extent. There is total silence of interest part. Similarly, Dr. Daya Kishan (PW-2) is silent about certain propositions i.e. whey he had lent such a huge amount to an unknown person? Why he had not kept a proper account? Why he had not come forward with any account number from which he had withdrawn the amount? Why he had not got the signatures of the accused person regarding the receipt of the alleged amount? Thus, considering the case from all angles, I am of the view that the complainant has failed to establish the amount recoverable from the accused. Therefore, the cheque in question cannot be deemed having been issued for discharge of any debt or any other liability."*

10. A glance at the afore-said paragraph transpires that while acquitting the respondent-accused, learned trial Court has taken into consideration that issuance of cheque is doubtful and further that appellant has failed to establish that cheque in question issued in discharge of legally enforceable debt. As per the case of appellant respondent-accused has returned the amount by way of cheque, which was earlier obtained by her as loan. But to the utter surprise neither any pronote or receipt nor any other document executed by the respondent-accused has seen in the light of day.

Not only this complainant while appearing in the witness box when subjected to cross-examine did not tell the date, time or month of the advancement of loan by him to the respondent-accused. Even mode of payment of money was neither disclosed in the complaint nor could be established by way of evidence. Even the complainant has also stated that the interest @1 ½ % per month was settled between them but there is nothing on record to suggest that any amount by way of interest was ever paid by the respondent-accused to the complainant. Rather, the complainant is absolutely silent about the rate of interest. No proper account has also been kept by the complainant to show that it was advanced as loan to the accused. It is also well settled that mere signatures of the accused on the cheque is not sufficient to fasten her with criminal liability and the complainant is obliged to establish that the cheque was issued in discharge of legally enforceable debt.

11. As far as the limitation part in filing the complaint is concerned that has been discussed elaborately by learned trial Court, which calls for no interference by this Court.

12. So from the appraisal of impugned judgment and on its scrutinization, this court is of the considered view that the same neither suffers from any illegality or infirmity nor is founded on an erroneous appreciation of the evidence. Thus, finding no merit in the instant appeal, the same is dismissed and impugned judgment is upheld.

August 26, 2015 **(JASPAL SINGH)**
sonika/sham **JUDGE**