IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No. A-1030-MA of 2013 (O & M)
Date of Decision:-01.09.2016

Varinder Singh

...Applicant

Versus

Sandeep Kumar Chawla

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. T.S. Sidhu, Advocate for
Mr. Vikas Singh, Advocate
for the applicant.

Mr. Achin Gupta, Advocate
for the respondent.

HARI PAL VERMA J.

Though the instant application filed under Section 378(4) Cr.P.C., the applicant challenged the order dated 7.8.2013 passed by learned Chief Judicial Magistrate, Faridkot, vide which the learned Magistrate has acquitted the respondent-accused in a complaint filed under Section 138 of the Negotiable Instruments Act.

It is the case of the applicant-complainant that respondent-accused had borrowed a loan of Rs.50,000/- from him for his personal requirements. He has promised to pay the same to him on his demand and in order to clear his liability, the respondent-accused had issued a cheque bearing No.014332 dated 1.8.2008 for a sum of Rs.50,000/- drawn on Central Bank of India in favour of the complainant. However, when the said cheque was presented for encashment through his banker i.e. Punjab and Sind Bank, Branch Dashmesh Public School, Faridkot, it was bounced with the remarks "account closed". Accordingly, as required under Section 138 of the Negotiable Instruments Act, the complainant has served a legal notice dated 15.10.2008 upon the respondent-accused through his counsel. Despite service of the said notice, respondent-accused has failed to make the payment within the time prescribed under the Act, leading to a complaint under Section 138 of the Negotiable Instruments Act was filed.

During preliminary evidence, the complainant has appeared before the trial Court as CW1 and tendered into evidence his affidavit Ex.CW1/A. He has also tendered into evidence the documents i.e. original cheque Ex.C1, bank memo Ex.C2, postal receipts Ex.C3 and Ex.C4, acknowledgement Ex.C4/1, undelivered registered notice Ex.C5 and power of attorney Ex.C6.

On the basis of preliminary evidence, the learned Chief Judicial Magistrate, Faridkot summoned the respondent-accused to face trial under Section 138 of N.I. Act vide order dated 17.11.2008.

In the after charge evidence, the complainant examined himself as CW3 and his power of attorney as CW4. He also examined Verjinderpal Singh, Officer, Punjab and Sind Bank, Branch Dashmesh Public School, Faridkot as CW1 and Pardeep Kumar, Head Cashier, Central Bank of India, Faridkot as CW2.

In statement made under Section 313 Cr.P.C., the respondent-accused denied the allegations and also pleaded false implication.

On the basis of evidence, learned Magistrate vide judgment dated 7.8.2013 acquitted the respondent-accused with the observation that the complainant has failed to prove the existing liability of the accused in his favour as his own capacity of lending money is not proved on record.

It is the order of acquittal dated 7.8.2013, the applicant is agitating through this application.

Learned counsel for the applicant has argued that not only the entire approach of the lower Court is erroneous, even the evidence as adduced by the applicant has been discussed in the manner as if it was a suit for recovery of amount advanced to the accused despite the fact that the proceedings under Section 138 of N.I.Act are summary in nature. The statement of the accused under Section 313 Cr.P.C. would reveal that the presumption raised by Section 139 of the Act was not rebutted. The accused has not denied his signatures on the cheque in question. The cheque was issued by the respondent-accused and when it was presented, same was bounced with the remarks “account closed”. The trial Court has merely acquitted the respondent-accused observing that the notice, which was issued to the respondent-accused was not on record because the envelope sent to the respondent-accused was empty. Therefore, the Court below has committed a patent error because the envelope was produced before the Court during the preliminary evidence as CW5 and at that time if the envelope had been empty, the notice could not have been issued to the accused. The same has not been considered by the Court. He further states that the application moved by the applicant under Section 311 Cr.P.C. for bringing additional evidence was rejected in a patently illegal manner.

I have heard learned counsel for the applicant.

In order to meet the requirement under Section 138 of the N.I.Act, the complainant is required to prove the offence against the accused beyond the shadow of reasonable doubt. But the complainant has not succeeded in proving the existing liability of the respondent-accused while appearing as CW3 and his power of attorney as CW4. The complainant has tendered into evidence his affidavit as CW3/A and in his affidavit he reitreated the version as given in the complaint. There is no dispute that the cheque in question was dishonoured on its presentation for encashment by the complainant due to the remarks "accounts closed". The evidence led by the complainant remained unrebutted and unchallenged. No doubt the presumption under Section 139 of the Act is that once a cheque is issued, it is presumed that the same has been issued in discharge of debt or other liability but the presumption is rebuttable. It can be rebutted by way of adducing evidence. But in the case in hand the complainant has failed to prove the fact of lending of money by him. More so even in his statement, the complainant has nowhere stated that on which date the amount in question was advanced to the respondent-accused. The accused has even taken the plea of forgery of the cheque. However, the respondent-accused has enough stress regarding non-service of notice. The complaint in question has been filed by the complainant Rajinder Singh through his power of attorney Narender Singh but neither in the complaint nor in the evidence the alleged date of loan is mentioned. In the absence of the legal notice, which is one of the requirement to fulfil the offence under Section 138 of the N.I. Act and coupled with the fact that statement of the complainant no where suggests that on which date the amount in question was advanced to the respondent-accused, this Court finds that there is no illegality in the order dated 7.8.2013 passed by the learned Chief Judicial Magistrate, Faridkot.

Accordingly, the revision petition is dismissed.

September 01, 2016 **(HARI PAL VERMA)**
Vijay Asija **JUDGE**

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No