IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1155-MA of 2014
Date of Decision: April 21, 2016

M/s Singh Finance Corp ...Petitioner

Versus

Gurdev Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Ashish Bansal, Advocate
for the appellant.

FATEH DEEP SINGH, J.

A criminal complaint under Section 138 of Negotiable Instrument Act (in short, 'the Act') was preferred by the present appellant i.e. complainant M/s Singh Finance Corporation through its partner Pritpal Singh against the accused Gurdev Singh. The precise averments were to the effect that the accused has taken a loan of ₹25,000/-for personal use from the complainant on 21.4.2008 and in acknowledgement of this outstanding amount had issued a cheque No.855793 dated 25.8.2008 for sum of ₹10,000/- Ex.C11 as part payment. On the assurance of the accused the complainant presented the said cheque for encashment to its bank, who returned the same dishonoured with the remarks 'funds insufficient' vide memo dated 26.08.2008 Ex.C12. Upon necessary formalities of service of due legal notice dated 11.9.2008 Ex.C13 and after requisite period, a complaint was preferred in which the complainant examined himself as CW1. It was thereafter through impugned judgment dated 3.12.2011 Court of learned Judicial Magistrate 1st Class, Jalandhar dismissed the complaint of the complainant and that is how the complainant has invoked the jurisdiction of this Court in this appeal. Though, notice of the appeal was given to the accused but inspite of due service none has put in appearance.

Heard, learned counsel for the petitioner and perused the records of the case. It is the own stand of the accused taken before the trial Court of having issued a cheque in question but claims that the same was as surety for the loan which he has taken and loan amount stands returned by him, though, no receipts were issued by the complainant to this effect. It has been rightly contended by the learned counsel for the appellant that the presumption under Section 139 of the Act mandates that there exists legally enforceable debt or liability and which certainly to the mind of this Court and as is well enunciated principle of law for which reliance has been placed on ***2015(3) Civil Court Cases 205 (S.C.) T. Vasanthakumar vs. Vijayakumari*** is rebuttable presumption and for which it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested.

Reverting back to the present case, as the impugned judgement reflects that the learned trial Court Magistrate has harboured on the provisions of Section 139 of the Act holding that in a criminal case complainant has to establish beyond reasonable doubt his case against accused and has held that *"_ _ _ _ _ Presumption under Section 139 of Negotiable Instrument Act does not extended (sic) to the existence of legally enforceable debt as on the date of cheque and existence of such debt is to be proved by the complainant beyond reasonable doubt like and other fact"* and, thus, has gone contrary to this statutory provision and the ratio laid down by the Hon'ble Apex Court. Accused neither sought to prove his probable defence of having taken the loan and of having issued the cheque in question as a surety for that very loan amount. There is studied silence on the part of the accused in responding to the legal notice of the complainant . The memo carries the fact that on account of insufficiency of funds the cheque in question stood dishonoured. Under what circumstances the cheque in question has been issued by accused have never been satisfactorily explained in the defence of the accused who has neither himself stepped into the witness box nor has brought about any evidence except a bald testimony of one DW1 Dalbir Singh as Ex.DW1/A, wherein, as has been detailed on behalf of the appellant by his counsel neither accused has serialised how or in what manner he has paid back the installments raked by him in his stand from DW1 and rather admitted the own documents of the complainant for having extended the loan arrangement by way of proposal form for hire-purchase by way of Ex.C5, the statement of the guarantor Ex.C6, deed of agreement Ex.C7 and terms and conditions of loan Ex.C8 and unrebutted stand of the complainant by way of account books maintained by the complainant-firm in its ordinary course of business leaves no scope to doubt that it was in pursuance of such an arrangement accused has issued a cheque which ultimately bounced on account of insufficient funds and rather the cross-examination of CW1 makes it sufficiently clear of this loan having been taken by the accused and even in his stand as DW1 by way of Ex DW1/A, witness of the complainant submits having taken the loan. Thus, in the totality of these facts there has been certainly wrong interpretation of the evidence by the trial Court as well as fact that initial onus which lay upon the complainant sufficiently shifted upon the accused in terms of Sections 101, 102, 103 of the Evidence Act and which the accused failed to bring about in his defence or rebut the case of the complainant.

The trial Court has certainly erred in dismissing the complaint. The impugned judgment is, thus, reversed and set aside, thereby, convicting the respondent-accused for commission of offence under Section 138 of the Act. Since the accused-respondent has not appeared before this Court, he is hereby sentenced to undergo rigorous imprisonment for one year with a fine of ₹5000/-and in default thereof to further undergo rigorous imprisonment for two months .

The present appeal stands disposed off granting leave to appeal.

(FATEH DEEP SINGH)
JUDGE

April 21, 2016
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