

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-214-MA of 2014

Date of Decision: April 05, 2016

Rattan Singh

...Petitioner

Versus

Ramandeep Malhotra

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. V.K. Sandhir, Advocate
for the petitioner.

FATEH DEEP SINGH, J.

Initially, a complaint Annexure P/1 was preferred by the present appellant-Rattan Singh, proprietor of M/s Surinder Building Material against accused now respondent-Ramandeep Malhotra. The brief allegations were to the effect that the accused has purchased certain building materials from the complainant and for payment of the outstanding liability issued cheque No.263702 dated 20.12.2008 Ex.C1 for a sum of ₹30,000/- drawn on ICICI Bank Ltd with the assurance that the same will be duly encashed on its presentation. It is the case of the complainant that on due presentation the same was dishonoured with the remarks 'funds insufficient' vide memo dated 28.2.2009 Ex.C2. It is alleged that when complainant met the accused along with the cheque in question he failed to make the payment and, thereafter, the complainant issued legal notice dated

28.3.2009 Ex. C3 through post and, thereafter, the complaint under Section 138 of the Negotiable Instruments Act, (in short, 'the Act') was filed. The complainant after summoning of the accused through his attorney CW1 Gurbinder Singh proved the allegations by way of affidavit CW1/A and proved documents Ex.C1 to Ex.C4. The accused denied the allegations but did not lead any evidence in defence. The Court of learned Judicial Magistrate 1st Class, Amritsar through impugned judgment dated 19.10.2013 dismissed the complaint and that is how the present invocation under Section 378 (4) of Cr.P.C. has come about at the behest of the complainant.

Upon hearing at length learned counsel for the appellant and perusal of the records. There has been a categorical findings by the trial Court to the effect that complainant as CW1 had admitted that the accused after service of the legal notice had given him the cheque amount of ₹30,000/- and had added further that after 3-4 days he returned the cheque amount as he wanted to initiate legal action. Admittedly, as per the own stand of the complainant, consequent upon dishonour of the cheque he has issued legal notice Ex.C3 through his counsel which is dated 28.3.2009 as per the own admission of CW1, who has testified as attorney holder of the complainant being his son. He has accepted that the accused after receipt of notice during the **notice period** met him at his shop and offered him payment of amount in question but he did not receive it since other amount was outstanding and further admits that he has received a sum of ₹1,80,000/- from the accused as rent of shuttering and it is further admitted by the complainant that accused had given him a sum of ₹30,000/-regarding

cheque amount and voluntarily after 3-4 days he returned back the cheque. Section 17 of the Evidence Act defines that the term admission oral or documentary as which depicts inference as to any fact in issue or relevant fact and which is made by any of the persons or the circumstance mentioned herein. Section 18 of the Evidence Act ensures that statements made by a party to the proceeding or by an agent to any such party who is so expressly or impliedly authorised by him to make admission binds the party. Thus, by virtue of these provisions admission by Gurbinder Singh attorney as well as son of the complainant that accused within the period of notice had given ₹30,000/- to him being the amount of the cheque which he accepted is a piece of legal evidence. Section 138 of the Act lays down commission of offence by way of proviso (b), (c) where in case demand for the payment of said amount is made by giving a notice in writing by the holder in due course of the cheque on receipt of information from the Bank and the drawer of the cheque fails to make the payment of the said amount within 15 days of the receipt of said notice offence is deemed to have been committed, thus, it is emphatically clear from the very wording of this proviso that after 15 days of the service of notice when the drawer fails to make the payment an offence under Section 138 of the Act stands committed and which is not so in the present case. It is the own case of the complainant side that the accused had made good the payment within the notice period and paid him ₹30,000/- which he received and, thus, by this acceptance of that very cheque amount washes away right of the complainant to file a complaint and no offence is deemed to have been committed. Moreover, looking from another angle in the light of the this

admission and the stand of the complainant that he had returned this amount after 3-4 days as he wanted to initiate a action, though, apparently is belated, afterthought to undo this damage but by virtue of this admission onus shifts upon the complainant to establish that he had returned the amount in terms of Sections 101, 102, and 103 of the Evidence Act which is also not brought about by any means. Thus, apparently, the learned Court below has rightly appreciated this aspect of the matter and has come to a justifiable conclusion. The findings needs to be upheld. The application for leave to appeal, thus, stands declined and the appeal is dismissed in limine.

(FATEH DEEP SINGH)
JUDGE

April 05, 2016
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