

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-AS-186-2016

Date of decision:-5.12.2017

Sumit Bhardwaj

...Appellant

Versus

Manoj Sood

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Kapil Khanna, Advocate
for the appellant.

Mr.Kamaljeet Singh, Advocate
for the respondent.

H.S. MADAAN, J.

Complainant Sumit Bhardwaj had filed a complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act) against accused Manoj Sood on the allegations that at request of the accused, who had represented that he was in dire need of Rs.5 lacs for the purpose of purchasing of plot, the complainant had advanced a sum of Rs.5 lacs to him on 11.3.2014; that to discharge his said liability, the accused had issued a cheque bearing No.001933 dated 12.5.2014 from his account No.65034990710 in the sum of Rs.5 lacs drawn on State Bank of Patiala, Dera Bassi Branch in favour of the complainant; that the complainant had submitted the cheque to his banker Vijaya Bank, Dera Bassi Branch for collection of the same from

the banker of the accused but the cheque was received back uncashed along with memo having endorsement "Account Closed"; that the complainant was informed accordingly on 9.7.2014; that he had issued a legal notice dated 17.7.2014 to the accused calling upon him to make the payment of the cheque within 15 days from the receipt of notice but to no effect, as such complaint was filed in the Court of Sub Divisional Judicial Magistrate, Dera Bassi.

After recording of the preliminary evidence, the accused was summoned. Notice of accusation under Section 138 of the Act was served upon him, to which, he pleaded not guilty and claimed trial.

During the course of his evidence, complainant Sumit Bhardwaj got his own statement recorded as CW1 and tendered in evidence his affidavit duly sworn Ex.CW1/A, in which he reiterated on oath his case as given in the complaint. He proved various documents i.e. original cheque No.001933 dated 12.5.2014 as Ex.C1, memo of bank dated 8.7.2014 as Ex.C2, copy of legal notice dated 17.7.2014 as Ex.C3 and postal receipt dated 17.7.2014 as Ex.C4. In addition to that the complainant further examined Ms.Priyanka, Clerk, Vijaya Bank, Dera Bassi as CW2, who brought the record pertaining to bank statement of Sumit Bhardwaj as Ex.C5. She further proved memo of bank dated 8.7.2014. The third witness examined by the complainant happened to be Sh.Vakil Soni, Clerk, State Bank of Patiala, Main Branch, Dera Bassi, who brought the record of statement of account No.65034990710 in the name of Manoj Sood proving its attested copy as Ex.C6. The complainant tendered in evidence original affidavit given by accused Manoj Sood as Ex.C7 and then closed his evidence.

Statement of the accused was recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against him pleaded false implication and took up a plea that he is innocent and he has returned the amount of the cheque to the complainant through Baljit Kumar son of Jati Ram as per the compromise Ex.D1 which was effected between the parties and the same is already on the file as Ex.D1.

During his defence evidence, the accused examined Baljit Singh son of Late Jati Ram as DW1.

Thereafter, the defence evidence of accused stood closed.

Learned trial Magistrate had formulated following point for determination:

“Whether accused Manoj Sood in discharge of his legally enforceable liability issued a cheque No.001933 dated 12.5.2014 amounting to Rs.5,00,000/- drawn on SBOP, Dera Bassi in favour of the complainant which got dishonoured when presented by the complainant with remarks “Accounts Closed” in memo and thereafter, despite legal notice dated 17.7.2014 accused Manoj Sood failed to make the payment of the said amount?”

After hearing arguments, the learned trial Magistrate dismissed the complaint under Section 138 of the Act and acquitted the accused of the notice of accusation.

The complainant felt aggrieved and he had knocked at the door of this Court by moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the judgment of

acquittal, which was allowed vide order dated 20.12.2016.

Notice was served upon the respondent – accused, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the records.

The reasoning given by the trial Magistrate for dismissal of the complaint is as follows:

(i) The defence being raised by the accused is that he has paid the entire cheque amount to the complainant through Baljit Kumar son of Jati Ram in terms of compromise Ex.D1 and that the complainant appearing as CW1 in his cross-examination had admitted his signatures on that compromise Ex.D1 further stating that it had been written in the compromise that nothing was due towards the accused. DW1 Baljit Kumar had deposed that compromise Ex.D1 was scribed in his presence and was signed by him. He had identified his signatures on the compromise adding that the second witness happened to be Sunny Jain and complainant had received the entire payment from Manoj Sood in their presence promising to withdraw the present complaint.

(ii) The necessary ingredients of the offence under Section 138 of the Act that cheque had been issued for the discharge, in whole or in part of any debt or

other liability was not proved on the record by the complainant and presumption under Section 138 of the Act in favour of the holder of the cheque was rebutted from the fact that cheque in dispute Ex.C1 had been as security cheque because complainant was fully aware of the fact that cheque would not be encashed because it was not valid for a sum above Rs.50,000/-.

(iii) Failure of the complainant to prove necessary ingredients of offence under Section 138 of the Act that the cheque had been issued in discharge of legally enforceable liability.

(iv) The complainant had failed to prove any legally enforceable liability of the accused in discharge of which he had issued the cheque.

I do not find any illegality and irregularity in the judgment passed by the learned trial Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Finding no merit in the appeal, the same stands dismissed.

5.12.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No