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

CRM-A-1569-MA-2017 (O&M)
Date of decision: - 18.9.2017

Gurdeep Singh **......Petitioner**

versus

Pinky Malhan **......Respondent**

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. Saleem Ahmed, Advocate for the applicant-appellant.

ARVIND SINGH SANGWAN, J (ORAL)

Prayer in the present appeal is for setting aside the judgment dated 9.1.2017, vide which trial Court has acquitted the respondent-accused in a complaint under Section 138 of the Negotiable Instruments Act, 1881.

Brief facts of case are that appellant-complainant has filed the instant complaint under Section 138 of the Negotiable Instruments Act, 1881 on the ground that respondent-accused has borrowed an amount of ₹ 8.00 lacs for her domestic needs on 30.6.2015 for a period of two weeks and in order to discharge her liability issued a cheque No. 0026679 dated 15.7.2015 for a sum of ₹ 8.00 lacs which on presentation before the Bank was dishonored on account of *"account closed"*.

Appellant-complainant in support of his case examined himself as CW-1; tendered his affidavit/evidence as CW1/A; the original cheque as C-1; Bank memo as C-2; legal notice as C-3 and postal receipts as C-4. Thereafter, trial Court summoned the respondent-accused to face trial and she pleaded not guilty and claimed trial.

After the pre-charge evidence was closed, statement of the respondent-accused was recorded under Section 313 Cr. P.C., and she again claimed that she has not taken any amount and did not issue cheque-in-question in favour of appellant-complainant.

In defence, accused examined Rajinder Kumar (stamp vendor) to prove the entry Ex. DW1/A. He also relied upon the statement of account Exs. D1 to D3.

Trial Court while acquitting the respondent-accused recorded the following findings: -

> " 12. First and foremost contention of learned counsel for the defence is that cheque in question was never issued in favour of complainant to discharge legally enforceable debt, CW1 Gurdeep Singh stated on oath that accused borrowed a sum of Rs. 8 lakh/- and in order to discharge her liability issued cheque in question.
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> Accused has come forward with a specific plea that she never borrowed any loan from the complainant nor issued cheque in question in favour of the complainant. Cheque in question was forged by the complainant in connivance with his son, namely Lakhvinder Singh.
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> Cross examination of the complainant shows that he stated that his son Lakhvinder Singh have money dealing with the son of the accused namely Vinit Malhan. He also stated in categorical terms that cheque in question was blank security check laying with his son Lakhvinder Singh. By these admissions complainant admitted that defensive plea of the accused to the effect that cheque in question was not issued by the accused in favour of the complainant in discharge of liability of Rs. 8 lakh.
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> 13. Apart from the cross-examination of the complainant also shows that the complainant stated that an amount of Rs. 8 lakh was laying with him in cash. Amount of Rs. 8 lakh in the huge amount and it cannot be normally expected from a retired person that he had such an amount in cash laying at his house. In such circumstances it becomes necessary for the complainant to bring on record material to show the source of alleged advanced amount. It is pertinent to mention here during his cross-examination complainant also refers to some previous dealing with the accused to explain the fact that why he had not got executed any writing

or pronote. But surprisingly no evidence was brought on record by the complainant to prove such alleged previous money dealings. Further in his cross-examination dated 20/08/2016 complainant also stated that he do not know who filled the cheque in question. Meaning thereby the complainant itself not clear about the fact that who filled the cheque in question and does not give any explanation in this regard.

14. Further it is pertinent to mention here that perusal of account statement of the accused exhibit D2 shows that the subsequent cheque in series from cheque No. 26681 to 26693 was getting used by the accused in the year 2006-2007. But surprisingly cheque in question which bears No. 26679 was issued by the accused in the year 2015. Such a long preplanning is highly improbable and corroborates to the version of the accused when seen in the light of the fact that cheque was dishonoured due to the reason account closed. Further, perusal of the cheque exhibits C1 shows that is a very old cheque and does not contain 16 digit account number. However, nowadays 16 digit account number is printed on the cheque itself. No explanation came from the side of the accused as to why he accepted such on old cheque. Therefore, all these facts and admissions made by the complainant during his cross-examination shows towards the falsity of the present complaint.

14. Section 139 of the Negotiable Instrument Act provide that:-

> *"It shall be presumed, unless the contrary is proved that the holder of a cheque received the cheque, of the nature referred to in Section 138, for the discharge, in whole or in part, of any debt or other liability."*

15. No doubt presumption under section 139 of Negotiable Instrument Act, is in favour of holder of the cheque but the same is rebutable and accused is required to rebut the presumption on the basis of preponderance of probabilities and not beyond reasonable doubt. Accused can rebut the presumption on the basis of preponderance of probabilities and accused is not required to rebut it beyond reasonable doubt. In the present case, accused succeeded in rebutting the presumption by leading a probable defence.

16. In view of the aforesaid discussion, the accused is acquitted of the notice of acquisition levelled against her. Compliance of Section 437-A CRPC be made immediately. File be consigned to record room after due compliance."

It is submitted on behalf of appellant-complainant that respondent-accused was known to her and she has given this amount as a friendly loan to respondent-accused.

I have heard counsel for the petitioner and find no force in his submissions as except complainant- Gurdeep Singh, no other witness has been examined by the applicant-complainant to prove that huge a amount of ₹ 8.00 lacs was paid in cash to respondent-accused. It is also a matter of record that cheque, which was allegedly handed over by the accused to the appellant had become obsolete and it was a cheque issued from an old cheque book which was not in vogue at the time it was presented as in 2015, the bank accounts were made computerized and only new cheque books bearing 16 digits corresponding the computerized three years tenure were operational. Therefore, trial Court has rightly acquitted the respondent-accused.

In view of above, I do not find any merit in the present appeal.

Dismissed.

(ARVIND SINGH SANGWAN)
18.9.2017 **JUDGE**
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Whether speaking/reasoned *Yes/No*
Whether Reportable *Yes/No*