IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A No.1645-MA of 2015
Date of decision: 14th March, 2017

Virender Kumar

... Applicant/appellant

Versus

Krishan Kumar Kakkar

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Tarunveer Vashist, Advocate for the applicant/appellant.

FATEH DEEP SINGH, J.

This is a leave to appeal preferred by the unsuccessful complainant Virender Kumar whereby he has sought relief in question against accused respondent Krishan Kumar Kakkar as his complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'the Act') stood dismissed by the Court of learned Judicial Magistrate 1st Class, Hisar through impugned judgment dated 14.07.2015.

The brief facts that needs to be reproduced are that it is case of the complainant that on the request of the accused he advanced a friendly loan of Rs.1,60,000/- and subsequently in acknowledgement of this outstanding debt the accused issued cheque No.772370 dated 06.05.2014 for a sum of Rs.1,60,000/- drawn on Oriental Bank of Commerce, Hisar from his account in favour of the complainant on the assurance that the same would be honoured on due presentation. It is case of the complainant that as per asking of the accused when he duly presented the cheque to the concerned Bank, the same was dishonoured with the remarks ‘account closed’ which was received by him through bank memo dated 08.05.2014 and thereafter he had issued legal notice dated 16.05.2014 and inspite of the same the accused failed to return the amount and thus, has committed the offence.

The accused was summoned and served with the notice of accusation on 10.10.2014 to which the accused denied. The complainant examined himself as CW1 and tendered his affidavit Ex.CW1/A and proved documents Ex.C1 to C4 comprising the original cheque, Bank memo, legal notice and the postal receipt and thereafter closed his evidence.

The accused denied the allegations in his statement under Section 313 Cr.P.C. and examined in his defence DW1 Manoj who tendered his affidavit Ex.DW1/A and sought to rebut the case of the prosecution on the grounds that it was a security cheque of an earlier transaction which has been misused by the complainant and that is how the impugned findings were brought about dismissing the complaint.

Appreciating the submissions of learned counsel for the applicant/appellant, the stand of the defence taken through DW1 Manoj through his affidavit Ex.DW1/A that on 08.10.2013 respondent accused Krishan Kumar Kakkar had borrowed a sum of Rs.10,000/- from the complainant and had promised to repay the same within two months and which amount the complainant had given to the accused in his presence, who as a security gave two post dated cheques and after the amount of Rs.10,000/- was given back to the complainant, the complainant misused these cheques and which stand as is there from the records and is admitted in the submissions of learned counsel for the applicant/appellant is duly accepted whereby the complainant admits that he had earlier given, as claimed by DW1, a loan of Rs.10,000/- and that he had received two security cheques and that the loan amount was returned by the borrower, are matters which certainly brings forth the plausibility and probability by preponderance of probabilities in favour of the defence that the stand of the defence is truthful and rather it is the complainant who is on the wrong. No doubt, a presumption arises in favour of the holder of a cheque that the same was received by him in acknowledgement and discharge of a legally enforceable debt by virtue of Section 139 of the Act. The learned trial Court by framing the points/questions which the Court thought it prudent ought to be determined, had drawn the conclusions whereby findings on points (A) and (B) were in favour of the complainant but while determining the findings on point (C) has drawn the conclusion that the presumption under Section 139 of the Act stood rebutted adequately by the accused and that the actual loan amount stood repaid and there was no legally enforceable debt of Rs.1,60,000/- in favour of the complainant and rather it was a pure misuse of the security cheques so taken from the accused by the complainant at the time of extending him loan facility of Rs.10,000/-. More so, the utter failure of the complainant as has been observed by the Court below to hold out his financial status to advance such a loan and its non reflection in his income tax returns or allied documents, are matters which further impinge upon the judicial conscience and which has been rightly done so by the Court below. Thus, in the totality of what has been detailed and discussed above as well as by the findings of the impugned order, nothing tangible comes to the aid of the applicant/appellant and in view thereof, the prayer of the appellant/applicant is declined and the application for leave to appeal being without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

March 14, 2017
rps

Whether speaking/reasoned Yes/No
Whether reportable Yes/No