IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.730 of 2017 (O&M)
Date of Decision: May 03, 2017

Munni

...Petitioner

VERSUS

Harmeet Singh and another

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Neeraj Madan, Advocate
for the petitioner.

Mr.Kamal Narula, Advocate
for respondent No.1.

Mr.V.P.S.Sidhu, Asstt. Advocate General, Punjab
for the respondent-State.

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INDERJIT SINGH, J.

The present revision has been filed by the petitioner Munni against respondents Harmeet Singh and State of Punjab, challenging the impugned judgment of conviction and order of sentence dated 17.09.2016 passed by learned Chief Judicial Magistrate, Fazilka, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹2000/- and in default of payment of fine, to undergo imprisonment for a period of one month under Section 138 of the Negotiable Instruments Act and also challenging the judgment dated 08.02.2017 passed by learned Addl. Sessions Judge, Fazilka, vide which appeal filed by petitioner was dismissed.

From the record, I find that the complaint was filed against the petitioner under Section 138 of the Negotiable Instruments Act. The brief averments of the complaint as noted down in the judgment passed by learned CJM, Fazilka, are as under:-

> *"The complainant has filed the present complaint against accused on the allegations that in order to discharge her debt/liability, accused issued a cheque no. 914223 of Rs.2,00,000/- in favour of complainant on 15.12.2015 drawn on The Fazilka Co-op Bank Ltd. Branch City Fazilka out of her account no. 3863 with assurance of its encashment on presentation. Accordingly, the complainant presented the cheque through his banker namely Axis Bank, Branch Fazilka for collection but the same was returned unpaid due to insufficient funds vide memo dated 18-12-2015. The matter was brought to the notice of accused with request to make the payment but accused flatly told that she issued the cheque deliberately and with malafide/dishonest intention to cheat/defraud the complainant. Then the complainant got issued a notice on 21.12.2015 through his counsel Sh. Amit Arora, Advocate by way of registered post calling upon the accused to pay the cheque amount within the period of 15 days from the date of receipt of the notice but accused did not pay anything. Hence, this complaint."*

The defence of the accused in the present case is that she is innocent and has been falsely implicated in this case. In her statement under Section 313 Cr.P.C., the accused stated that she never issued any cheque in favour of complainant in order to discharge any liability. The father of complainant was her colleague and complainant was working as an agent of Pearl Company who opened her three accounts i.e. one on her name and other in the name of her children. She paid the amount to complainant to deposit in her account with Pearl Company. She also stated that when the installments became due, complainant charged 7% interest. On completion of term of the accounts with Pearl Company, she requested the complainant and his father for refund of money. They got her three blank cheques on the pretext that it was necessary formality to obtain money from Pearl Company. When complainant did not return any amount, she moved an application against the father of complainant to DC, Fazilka which was marked to EO Wing and DSP, Fazilka was directed to inquire into the matter in which a compromise was effected. The complainant and his father assured her to withdraw the present complaint and to return the cheque. The complainant has falsely implicated her in connivance with his father Darshan Singh. The present complaint was filed against her to grab her amount as she demanded her money from Darshan Singh and complainant as term of RD accounts was completed. In defence, accused examined herself as DW-1, DW-2 Mam Raj and DW-3 Mandeep Kumar Mand.

Learned CJM, Fazilka, after appreciating the evidence, convicted and sentenced the petitioner as stated above. An appeal was filed by the petitioner and the same was dismissed by learned Addl. Sessions Judge, Fazilka, vide judgment dated 08.02.2017.

Aggrieved from the above-said judgments, present revision petition has been filed.

Notice of motion was issued and learned State counsel appeared and contested the petition.

Record of the lower Courts was also requisitioned.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the lower Courts record.

From the record, first of all, I find that in the complaint, no date, month or year has been mentioned as to when the liability arose against the petitioner. There are no particulars of any type disclosing the liability. Nothing is mentioned in the complaint that in whose presence, at which place the amount was given and what was source of the amount and whether the amount was paid in cash or by cheque. Secondly, there is also nothing whether this amount has been given at one time or at many times in number of installments or whether this amount of ₹2 lakhs included the interest or not. There is also nothing in the complaint that for what purpose the accused took this amount from the complainant. No receipt or security document was taken by the complainant when this amount was given to the accused. There is no document on the record showing the loan transaction between the parties.

As the cheque is stated to be signed by the accused, presumption under Section 139 of the Negotiable Instruments Act is to be raised against the accused but it is settled law that accused can rebut the presumption by raising probable defence, which can be supported and corroborated by the defence evidence or from the case of the complainant. This is one circumstance that no date, month or year has been mentioned in the complaint. No particulars of any type qua the liability have been given. No document has been taken as security at the time of advancing the loan. No other document has been produced on the record to show this loan transaction between the parties in this case.

The accused-petitioner has raised probable defence. She examined herself as DW1 and deposed as per defence version. The complainant admitted the fact that policies of Pearl Company were issued by him. Further, the defence of the accused has been supported and corroborated by the complaint given by the accused against the father of the complainant. It is clear from the evidence on record that accused is the gardener in the office and the father of the complainant is in clerical cadre.

The perusal of the record further shows that cheque is signed by the accused in 'Hindi' and the body of the cheque is filled in 'English', which means t at the cheque was not filled by the accused.

Further, I find that Ex.D1 is the complaint made by the accused to the Deputy Commissioner, Fazilka, which was received in the office of Deputy Commissioner on 18.12.2015. The cheque is stated to be issued on 15.12.2015. There is no reason for the accused to file the complaint within three days after the issuance of the cheque. Moreover, the cheque in question was dishonoured on 18.12.2015 and till then, the accused was not knowing that the cheque was presented and dishonoured. Therefore, the version of the accused cannot be disbelieved regarding filing of the complaint. This Ex.D1 supports the defence version. The perusal of Ex.D2 and other documents shows that a compromise took place between the parties before the Panchayat and it was found that Munni took the policies from Harmeet Singh and there was dispute regarding the money. As per this report dated 11.01.2016, the parties have compromised and it was decided that this complaint should be filed but after this compromise by the complainant. Other documents Ex.D4 and D5 also support the version of the accused-revision petitioner.

The perusal of the record shows that accused has raised probable defence, which has been duly supported and corroborated from the case of the complainant as well as defence evidence. Therefore, the presumption under Section 139 of the Negotiable Instruments Act has been duly rebutted by the accused.

In view of the above discussion, I find that the findings given by both the Courts below are perverse and illegal. Both the Courts below have misread the evidence and have wrongly convicted the present petitioner. Therefore, the impugned judgment of conviction and order of sentence dated 17.09.2016 passed by learned CJM, Fazilka and judgment dated 08.02.2017 passed by learned Addl. Sessions Judge, Fazilka, are set aside and petitioner Munni is acquitted of the charges framed against her.

Therefore, finding merit in the present petition, the same is allowed.

Petitioner Munni, who is in custody, be released forthwith, if her custody is not required in connection with any other case.

May 03, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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