IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) CRM-A - 769 MA of 2013 (O&M)
Date of decision : 9.5.2018
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Sangeeta Ahuja
................Appellant

vs.

Sunita Kapoor
.................Respondent

2) CRM-A - 855 MA of 2013 (O&M)
...

Sanjay Ahuja
................Appellant

vs.

Sunita Kapoor
.................Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sandeep K. Sharma, Advocate for the appellant(s).

Mr. D.K. Tuteja, Advocate for the respondent.

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H. S. Madaan, J.

Vide this order, I intend to dispose of two applications bearing CRM-A-769-MA-2013 titled as Sangeeta Ahuja vs. Sunita Kapoor and CRM-A-855-MA-2013 titled as Sanjay Ahuja vs. Sunita Kapoor.

Briefly stated, facts of the case are that complainant Sangeeta Ahuja and her husband Sanjay Ahuja had filed two criminal complaints under Section 138 of the Negotiable Instruments Act (hereinafter to be referred to as 'the Act') against accused Sunita

Kapoor, on the allegations that the accused had taken a friendly loan of Rs.5,50,000/- from Sangeeta Ahuja and Rs.6,50,000/- from her husband, namely, Sanjay Ahuja, promising to repay the amount as and when demanded and had issued cheques bearing Nos. 164807 dated 16.4.2011 and 164806 dated 18.4.2011, in the sum of Rs.5,50,000/- and Rs.6,50,000/- respectively, both drawn on Punjab National Bank, Sampla, in favour of the complainants, on account of discharge of the said liability. However, on presentation, the cheques were received back un-cashed due to insufficient funds in the account of the accused and the complainants were informed in that regard vide memos of the bank dated 21.4.2011 and 20.4.2011, respectively. Thereafter, the complainants had served legal notices dated 9.5.2011 and 10.5.2011, respectively through their counsel upon the accused, requiring her to pay the cheque amount within 15 days of the receipt of the notices, but she failed to do so, giving rise to the cause of action to the complainants, to bring separate complaints under Section 138 of the Act in the Court of Judicial Magistrate Ist Class, Rohtak.

After recording of the preliminary evidence, the accused was summoned in both the complaints. She put in appearance and was admitted to bail. Notice of accusation was served upon her to which she pleaded not guilty and claimed trial. The complainants led the evidence, both oral as well as documentary. Thereafter, the accused was examined under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against such accused were put to her, to which she denied, stating that she is innocent and has been falsely involved in these cases. During the defence evidence, she tendered document Mark D-X i.e. cross examination of Sanjay dated 8.4.2013

After hearing the arguments, the trial Magistrate, dismissed the complaints, vide judgments dated 30.7.2013.

The reasoning given by the trial Magistrate is contained in para No.12 of the judgment, in criminal complaint titled Sangeeta Ahuja vs. Sunita Kapoor, which for ready reference is reproduced as under:-

> "12. After giving heed to the submissions made by the counsel for both the parties, pertinent question arises that whether the above stated amount fall under the periphery of "legal enforceable debt or liability"?. Further whether the impugned cheque has been given by the accused to the complainant by way of security?
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> From the perusal of the cross examination of the complainant, it has come to the notice of the Court that the amount has been tendered by her in the year 2006.
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> Having said so it is pertinent to mention that the impugned cheque pertains to the dated 16.4.2011 i.e. way after period of three years from the cause of action. Further from the perusal of the case file, it has come to the notice of the Court that nowhere the complainant has stated that the accused

has acknowledged the abovesaid liability before the limitation period, therefore I opine that a time barred debt does not fall into the periphery of legal enforceable debt or liability.

Reliance placed upon ***M/s Vijay Polymers Pvt. Ltd. & Anr. vs. M/s Vinnay Aggarwal 2009(4) PLR (Delhi)*** wherein stated that Limitation Act, 1963, Section – Negotiable Instruments Act, 1881, Sections and – Dishonour of cheque – Time barred debt – Acknowledgment – Neither in the Complaint nor in the notice nor in the affidavit it has been stated that debt which became time barred paid by complainant to petitioner was ever acknowledged within the period of limitation so as to keep the liability alive – Cheques paid after three years of friendly loan having became time barred – Cheques issued in lieu of debt which was not legally recoverable at the time of issuance of cheque – Complaint as well as proceedings quashed.

Reliance was also placed upon ***Manjit Kaur vs. Vanita 2010 (3) RCR (Civil) 693 (P&H)*** wherein it is stated that cheque issued to repay time barred debt – Dishonour of cheque.

Loan of Rs. 95,000/- was advanced in the year 1999 to the accused- Accused did not repay the amount but issued a cheque for repayment in 2003 -

No acknowledgment was obtain before the expiry of three years from the date of loan – Held, the debt was not legally enforceable at the time of issuance of cheque and the accused could not be punished under Section 138 of the Act of 1881.

Further the complainant has categorically stated in her cross examination that the impugned cheque has been obtained by her by way of security. Here I would like to state that the admission is the best evidence where the Court need not to make a roving enquiry so as to corroborate the same, therefore, the fact that the accused issued the cheque by way of security established on the file and it is settled principle of law that the cheque rendered by way of security does not fall within the ambit of Section 138 of Negotiable Instrument Act if the same is dishonoured.

Reliance is placed upon Hon'ble Supreme Court authority ***Sudhir Kumar Bhalla vs. Jagdish Chand and others 2009 (1) CCJ 443***, where it has been stated that it is a settled law that if the cheques have been received by way of security the dishonour of above said cheque would not fall into Section 138 of Negotiable Instruments Act."

The reasoning given in the judgment passed in the connected complaint titled as Sanjay Ahuja vs. Sunita Kapoor is almost on similar lines.

Feeling aggrieved by the said judgments, the complainants have knocked at the door of this Court by way of filing separate applications under Section 378 (4) Cr.P.C. praying for grant of special leave to appeal, notice of which was given to the respondent.

Learned counsel for the applicant-appellants. while seeking special leave to appeal. has contended that the Trial Magistrate has come to wrong conclusion that no offence under Section 138 of the Act is proved against the accused, when the facts and circumstances of the case and evidence adduced by the complainants go to show otherwise. In support of his contention, he has referred to various authorities i.e. :-

1) ***Tarlochan Singh vs. State of Punjab and another 2010 (2) RCR (Criminal) 410;***
2) ***Ganga Prashad vs. Lalit Kumar 2008 (3) RCR (Civil)290;***
3) ***M/s Sai Auto Agencies vs. Sheikh Yousuf Sheikh Umar 2010 (3) Civil Court Cases 084 (Bombay);***
4) ***Moideen vs. Johny 2007 (1) Civil Court Cases 220 (Kerala);***
5) ***Hemant Pavel Gracias vs. Socorro Santan Fernandes 2008 (2) AICLR 428.***

On the other hand, learned counsel for the respondent has defended the impugned judgments saying that those does not suffer from any defect and should be upheld.

After hearing the rival contentions and going through the record, I find that the impugned judgments are well reasoned one and do not suffer from any illegality or infirmity. The initial presumption of the cheques having been issued on account of discharge of financial liability as provided under Section 139 of the Act stood rebutted from the admission made by the complainants in their cross examination and other facts and circumstances. It seems highly unlikely that complainant Sangeeta Ahuja would raise a housing loan from the bank, of course on payment of interest and would give that amount to the accused without interest, without there being any document evidencing the grant of loan. Furthermore, as has been stated by such complainant in her cross examination the loan had been advanced in the year 1999, whereas the cheques in question are of the year 2003 and as rightly observed by the trial Magistrate that since no acknowledgment was obtained before the expiry of 3 years from the date of loan, it was not legally enforceable at the time of issuance of cheque and the necessary ingredients of offence under Section 138 of the Act, were not fulfilled. It has rightly been observed that when cheques are tendered by way of security and the same gets bounced, that does not come under the mischief of Section 138 of the Negotiable Instruments Act.

Thus no special leave to appeal deserves to be granted.

Both the applications stand dismissed.

(H.S. Madaan)
Judge

9.5.2018
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No