IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-MA-1733-MA-2016 (O&M)
Date of Decision: 23.04.2018

Anu Bala

......Applicant

Vs.

Tarsem Kumar @ Bitta

.........Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Akhilesh Vyas, Advocate,
for the applicant.

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AMOL RATTAN SINGH, J.

By this appeal, the appellant, Anu Bala, has challenged the judgment of the learned trial Court (Judicial Magistrate Ist Class, Amritsar), dismissing the complaint instituted by her against the respondent, Tarsem Kumar @ Bitta, under the provisions of Section 138 of the Negotiable Instruments Act, 1881.

As per the case of the appellant, the respondent-accused took "temporary advances from time to time" from her, for his domestic needs and for completing the construction of his house, the total amount alleged to have been advanced by her to him, being Rs.3,63,500/-.

It was further the case of the appellant that in order to discharge part of his debt and liability towards her, the accused issued cheque no.900384 dated 28.01.2013, for an amount of Rs.3,00,000/-, drawn on the Punjab National Bank, Mcleod Road, Amritsar Cantt., in her favour, with the assurance that the instrument would be duly encashed as and when presented to the bank. However, when the cheque was presented through the bank of the appellant-complainant it was dishonoured, with the remark "Insufficient Funds", conveyed to her vide a memo dated 30.01.2013.

2. The appellant thereafter is stated to have served the accused with a legal notice dated 02.02.2013 through registered post, Acknowledgement Due, despite which the payment was not made, leading to the institution of the complaint.

3. The respondent having been summoned by the trial Court, the parties led their evidence, with the complainant examining herself as CW1, in terms of her complaint, also having exhibited four documents, including the cheque in question, a memo, a copy of the legal notice and a postal receipt.

4. In his statement under Section 313 Cr. P.C., the respondent-accused denied the charge against him, stating that the complainant (appellant herein) was running a "committee" of which he was a member since January 2013.

Subsequently, in July-August, the complainant started demanding blank cheques from him by way of security and later in the month of August 2013, she got his account opened in the Punjab National Bank and took four blank cheques from him, as security for the aforesaid "committee".

As per the respondent, out of the four cheques issued by him, the one in question was misused by the complainant, with a story cooked up against him, the other three cheques also being held onto by her as security, which she was not returning.

5. By way of defence evidence, the respondent examined the Manager of the Punjab National Bank, Amritsar Cantt. Branch, one Arjinder Singh, as DW1.

6. Upon considering the facts and the evidence before it, the learned trial Court observed that the appellant-complainant had taken contrary stands in the legal notice issued to the accused (Ex.P3) and the complaint filed by her against

him, as regards the total amounts of loan advanced by her, as also the purpose of the loan, inasmuch as, in the legal notice it was stated that the accused had approached her for temporary advances on account of a marriage in his family, with Rs.1,00,000/- first given to him and thereafter an amount of Rs.2,00,000/- having been given to him, thereby totalling Rs.3,00,000/- "in the month of December, 2011".

In the complaint instituted by her, on the other hand, she had stated that temporary advances had been given to the accused for his domestic needs from time to time and for completing construction of his house, with him having obtained a total sum of Rs.3,63,500/- for these purposes.

7. It was found by the trial Court that even as per DW1, i.e. the Manager of the Punjab National Bank, it was the complainant who had introduced the accused to the Branch of his bank, with her signature present on the "introduction column" of the account opening form, thereby lending credence to the defence taken by the accused, that after the account was got opened by the complainant, she obtained blank cheques from him by way of security, "in lieu of committee group being run" by her.

That Court also found that even during cross-examination of the complainant, a slip, Ex.D1, had been put to the complainant, which was admitted by her, and that the said document actually revealed that the name of the accused was given at the top of the slip, with an amount shown to have been deducted from the total sum of Rs.1,50,000/-, and the word "committee" also mentioned on the slip.

It was further found by that Court that during her cross-examination, the appellant-complainant had admitted that the accused had handed over three blank cheques to her and that she had in fact herself filled in the cheque in question, thereby also lending credence to the defence taken by the accused that a blank cheque had been misused by her.

8. Therefore, holding that the presumption raised in Section 139 of the Act against the accused stood successfully rebutted by him, as the complainant had failed to prove that the cheque in question was issued in the discharge of a legally recoverable debt or liability, the complaint was dismissed and the accused was acquitted.

9. Before this Court, though learned counsel for the applicant has argued the matter 'vehemently', to the effect that the contents of the legal notice would merge into the complaint itself, and therefore even two different facts given as regards the purpose of the loan stated to have been extended by the applicant to the respondent-accused, would not matter; however, in the opinion of this Court, such "merger" cannot work in favour of the applicant when two wholly contradictory pleas are taken in the legal notice and the complaint itself.

Further, even if what the accused stated in his statement under Section 313 Cr.P.C., to the effect that he had issued a cheque in respect of some "committee", is to be disbelieved for a moment, however, that activity (of running a committee) in any case not having been shown to be a legal activity and that not even being the contention of the complainant at any stage, with her contention being that the loan was given for the purpose of a marriage in the family of the accused and thereafter she contending that it was given for domestic work, I see no infirmity in the conclusion arrived at by the learned trial Court.

Still further, the detailed reasoning given by the trial Court, as has been referred to hereinabove, with regard to the Bank Manager (DW1) having revealed that it was the appellant who had actually introduced the respondent to the branch and had got his account opened on 14.08.2012, she already having an account in the same branch, seen further with the fact that in her cross-examination she even admitted to the correctness of the slip led in evidence by the respondent-accused, i.e. Ex.D1, showing a sum of Rs.1,50,000/- deducted, with the word "committee" also mentioned on the slip, and thereafter the appellant also admitting that she had filled up the amount herself, and yet further, the fact that different amounts were alleged to have been advanced by her, i.e. Rs.3,00,000/- as per the legal notice and a sum of Rs.3,63,500/- in the complaint instituted, I find no reason whatsoever to interfere in the judgment of the trial Court, as in my opinion also, the appellant had not been able to prove any legally payable debt at the hands of the respondent-complainant, in the discharge of which he had issued blank cheques to her. Thus, in the opinion of this Court also, the presumption raised under Section 139 of the Act of 1881 was duly rebutted by the respondent, with the onus thereafter shifted onto the appellant, in terms of Section 118 of the Act, to prove that there was a legally enforcible liability of payment of a debt by the respondent, which onus was not discharged by her.

Consequently, finding no merit in this petition, it is dismissed in *limine*.

April 23, 2018 **(AMOL RATTAN SINGH)**
nitin/dinesh **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No.