

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CRM-A-1646-MA-2014
Date of Decision: 13.08.2018

Kuldeep Singh

...Applicant

vs.

Ramesh Raj Marwah

..Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.J.S.Gill, Advocate, for the applicant.

ARVIND SINGH SANGWAN,J

Prayer in this application is for setting aside the judgment dated 16.08.2014 passed by the trial Court vide which the compliant filed by the applicant/complainant was dismissed.

Brief facts of the case are that the applicant/complainant was working in ABC Paper Mill and the accused/respondent was working as a Contractor in the aforesaid Mill and both of them developed friendly relations. In the year 2010, the accused borrowed a loan of Rs.85,000/- from the complainant on different dates, during the period from August 2010 to November 2010 and assured him to repay the same. The complainant contacted the accused in the month of July 2011 and demanded his money back. The accused, in order to discharge his liability, issued a cheque No. SNC 215229, dated 16.07.2011, for an amount of Rs.85,000/- in favour of the complainant, drawn on his account No.292500 2100009569 of the Punjab National Bank, Branch Village Paddi Sura Singh. The complainant, when presented the cheque in his bank on 10.09.2011, the same was dishonoured, vide bank memo dated 13.09.2011 with the remarks "Funds Insufficient".

The complainant, thereafter, issued a legal notice dated

30.09.2011 to the accused, demanding repayment of the cheque amount within 15 days. The said notice was duly received, but the accused, vide his reply dated 13.10.2011, refused to make payment. Thereafter, the complainant filed the present complaint.

In the preliminary evidence, the complainant examined himself as CW1 and tendered his evidence Ex. CW1/A reiterating the version given in the complaint. The complainant also tendered the cheque as Ex.C1; bank memo as Ex. C2; legal notice as Ex. C3, postal receipt as Ex.C4 and reply to the legal notice as Ex.C5.

Thereafter, the trial Court, vide order dated 31.10.2011 summoned the accused and on receiving the notice, the accused did not plead guilty and claimed trial.

In the post-charge evidence, the complainant appeared as CW1 and after the accused cross-examined him, he closed his evidence.

While recording the statement of accused under Section 313 Cr.P.C., all the incriminating evidence which has come on record was put to him and he denied the allegations and pleaded his innocence. The accused set-up a defence that neither he had borrowed the amount nor issued the cheque. It was also stated that the complainant was working as his Clerk/Accountant and accused was suffering from arthritis, therefore, he made him a partner w.e.f. March 2010 and the applicant/complainant was doing his account work and had opened the account in Punjab National Bank. The cheque book as well as ATM of the accused were in possession of complainant, as he was assigned the duty to make payment to the workers by withdrawing the amount through cheque book/ATM.

In reply to the legal notice, the accused has stated that the

complainant has misused the cheque and he is trying to extort money. In defence, accused tendered Ex. R5-reply to legal notice, R6-cash credit memo dated 28.07.2010, two memos as Ex.R7 and R8 and statement of bank account as Ex.R9.

Thereafter, the trial Court, vide impugned judgment, discharged the respondent-accused. The operative part of the judgment reads as under:-

“ After going through the file and after hearing the learned counsel for the complainant as well as the Learned defence counsel, this Court is of the considered opinion that the complainant has miserably failed to make out any case against the accused for the alleged commission of an offence punishable under Section 138 of the Act as pleaded by him. The position of the law is that once execution of the cheque is admitted, the presumption under Section 118 (a) would arise that it is supported by a consideration. But such a presumption is rebuttable. The accused can prove the non-existence of a consideration by raising a probable defence. If the accused is proved to have discharged the initial onus to prove, showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift upon the complainant, who will be obliged to prove it as a matter of fact and upon its failure to prove would dis-entitle him to the grant of relief on the basis of the Act. As discussed in detail above, the complainant has failed to prove the onus shifted upon him for proving that the cheque in question was issued by the accused towards his any debt to pay to the complainant, whereas the accused has sufficiently proved that the complainant has misused the cheque of the accused while operating the accounts of accused being the partner of accused.

Moreover, the reliance can be placed upon the judgment passed by the Hon'ble Apex Court in a case

titled as Krishna Janardha Bhat versus Dattatraya G. Hedge 2008 (1) Criminal Court Judgment 531 has very clearly held that:-

“ We are not oblivious of the fact that the said provision has been inserted to regulate the growing business, trade, commerce and industrial activities of the country and strict liability to promote greater vigilance in financial matters and to safeguard the faith of the creditor in the drawer of the cheque which is essential to the economic life of a developing country like India. This, however, shall not mean that the courts shall put a blind eye to the ground realities. Statute mandates raising of presumption but it stops at that. It does not say how presumption drawn should be held to have rebutted. Other important principles of legal jurisprudence, namely presumption of innocence as human rights and the doctrine of reverse burden introduced by Section 139 should be delicately balanced. Such balancing acts, indisputably would largely depend upon the factual matrix of each case, the materials brought on record and having regard to legal principles governing the same.”

However, as discussed above, in defence, accused did not examine any witness, but, it is not necessary for the accused to disprove the case of the complainant by way of direct evidence. Once the accused has rebutted the presumption under Section 139 of the Negotiable Instruments Act, the onus lay upon the complainant to lead further evidence to prove that the disputed cheque was actually given to him to discharge of the liability. But the facts and circumstances of the case clearly go to show that present cheque is a sham transaction aimed at harassing the accused and the complainant has failed to discharge the onus shifted upon him as discussed in the preceding paras of this judgment. Thus, the complainant has failed to prove beyond reasonable doubt that the

debt was legally recoverable on the date of the cheque in question from the accused.

In the instant case, the complainant has miserably failed to prove any legal liability against which the cheque was issued by the accused. As such, the complainant has failed to prove his case against the accused for the commission of an offence punishable under Section 138 of the Act, by leading cogent and convincing evidence. Moreover, the evidence which has come on record is not inspiring any confidence. Accordingly, all the points of determination mentioned in Para No.10 of the judgment are resolved against the complainant and in favour of the accused and the complaint filed by the complainant stands dismissed and accused Ramesh Raj Marwaha is hereby acquitted of the notice of accusation served upon him. Case property if any be disposed of as per rules, after the decision of appeal or revision if any. However, the accused is directed to furnish a personal bond in the sum of Rs.50,000/- under Section 437-A of the Cr. P.C. File be consigned to the Judicial Record Room, Garshankar, District Hoshiarpur after due compliance.”

Hence, the present application.

This application is pending since 2014. Counsel for the applicant has supplied photocopy of the Lower Court Record and has argued the case. It is submitted on behalf of the applicant that the applicant/complainant while appearing as CW1 has duly proved the advancement of loan to the accused. It is further argued that the cheque has been issued in discharge of the outstanding liability and the applicant after dishonouring of the cheque, had issued a legal notice and, thereafter he has filed a complaint and as such the trial Court has failed to draw the

presumption in favour of the complainant. It is also argued that the respondent-accused could not prove the defence taken in his statement under Section 313 Cr.P.C. and there is a presumption in favour of the complainant under Section 139 of the Negotiable Instruments Act as the accused has failed to rebut the same by leading any cogent evidence.

After hearing learned counsel for the applicant, I do not find any merit in the present application for the following reasons:-

a. The case setup by the applicant is that from August 2010 to November 2010, he was advancing loan to the accused, however, no specific date has been given. The trial Court has rightly held that when the complainant has advanced loan for the first time and the same was not returned by the accused, there was no occasion for giving further loan to the accused person.

b. The applicant/complainant has failed to disclose in the complaint that he is the partner of the accused and had opened the account in Punjab National Bank in the month of March 2010 i.e. prior to the date of advancement of the loan and this fact was proved by the accused by leading defence evidence that earlier the complainant was working as an Accountant with the accused and later on they started working together as partner.

c. In the cross-examination of CW1, it is admitted that the applicant/complainant was making payment to all the workers on behalf of the accused who used to stay in the house due to ill health and, therefore, the complainant was in dominating position as he was holding cheque book and ATM of the accused for this purpose. In the cross-examination of CW1, it could not be explained when the alleged amount

was advanced 07/08 times by the complainant to the accused. The complainant further admitted in the cross-examination that he has no account detail in writing with regard to advancement of the loan.

d. The complainant has admitted that GRD Fabcon business was carried out by him with the respondent-accused jointly as partner and he has also admitted that respondent-accused does not know reading and writing English language whereas the cheque in question was filled up in English script.

e. The trial Court has rightly recorded a finding that the respondent has rebutted the presumption as the complainant has failed to prove that the cheque was issued towards discharge of any legally enforceable liability or debt rather the accused has proved the defence taken by him by putting the same to the complainant in his cross-examination which raises a doubt about the genuineness of the loan transaction allegedly made by the complainant. The respondent-accused has rebutted the presumption by proving that no consideration had passed to him, in lieu of which the complainant was entitled to recover the amount by presenting the cheque in the bank.

Therefore, I find that the trial Court has rightly held that the accused has rebutted the presumption under Section 138 of Negotiable Instruments Act as the complainant has failed to prove that the cheque was issued in discharge of legally enforceable liability.

In view of the same, finding no merit in the present application, the same is dismissed.

13.08.2018
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(ARVIND SINGH SANGWAN)
JUDGE

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