

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Appeal No.S-1930-SB of 2011 (O&M)
Date of Decision: May 07, 2019

M/s Destiny Chit Fund Co. (P) Ltd.

...Appellant

VERSUS

Sat Parkash

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gaurav Sharma, Advocates
for the appellant.

None for the respondent.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant M/s Destiny Chit Fund Co. (P) Ltd. against respondent Sat Parkash, challenging the impugned judgment dated 20.12.2006 passed by learned Addl. Sessions Judge, Jalandhar, vide which appeal filed by accused-respondent against the judgment of conviction and order of sentence dated 16.12.2005 passed by learned Judicial Magistrate Ist Class, Jalandhar, was allowed and he was acquitted of the charges framed against him.

The brief facts of the prosecution case as noted down in the judgment passed by learned JMIC, Jalandhar, are as under:-

“2. Brief facts of the complaint are that the accused took a loan of Rs.2,62,980/- from the complainant company and in order to discharge the debt, he issued a cheque for an amount of Rs.2,18,890/- dated 27.08.2002 in favour of the complainant company. The said cheque was drawn on Citizen Urban Co-operative Bank Ltd., Jalandhar The complainant presented the

said cheque through its bankers State Bank of India, Old Railway Road, Jalandhar which was returned dishonoured with the remarks "Funds Insufficient". The complainant received the information on 28.08.2002 and the complainant got issued legal notice on 10.09.2002 but the accused has failed to make the payment within the statutory period of 15 days from the date of receipt of the notice. The accused has thus committed an offence under Section 138 of Negotiable Instruments Act."

In support of its case, complainant examined CW-1 Ravinder Kumar, authorized representative of the complainant company, who proved on record copy of incorporation certificate Ex.C1, memorandum and articles of association Ex.C2, copy of resolution Ex.C3, cheque in question Ex.C4, memo Ex.C5, copy of legal notice Ex.C6, postal receipts Ex.C7, UPC Ex.C8 and statement of accounts Ex.C9 to Ex.C11.

At the close of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. He denied the correctness of the evidence and pleaded his false implication and innocence.

Learned JMIC, Jalandhar, after appreciating the evidence, convicted the accused-respondent under Section 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for a period of one year and to pay fine of ₹5000/- and in default of payment of fine, to undergo simple imprisonment for a period of three months. An appeal was filed by accused-respondent and learned Addl. Sessions Judge, Jalandhar, accepted the appeal vide impugned judgment dated 20.12.2006 and acquitted the accused of the charges framed against him.

Aggrieved from the judgment dated 20.12.2006 passed by learned Addl. Sessions Judge, Jalandhar, present appeal has been filed along with the application for leave to appeal. Leave was granted and appeal was

admitted.

I have heard learned counsel for the appellant and have gone through the record.

The perusal of the findings given by learned Addl. Sessions Judge shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by learned trial Court. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court. The perusal of the findings shows that learned Addl. Sessions Judge, Jalandhar, has appreciated the evidence in right perspective.

The complainant examined sole witness Ravinder Kumar as CW-1. In his cross-examination, this witness deposed that loan was raised by the accused in August 1998. At the same time, he also claimed that loan was disbursed to the accused by making payment of two cheques, which are pertaining to 18.07.1998 and 24.07.1998, meaning thereby, the loan was disbursed in July 1998. The complainant has failed to produce any record on the file that accused ever took any loan from him. No account books etc. have been produced to show the transaction. As per the complainant case, loan file was returned to the accused when claim was settled. The Court took the notice of the fact that no businessman would return the file until or unless entire amount is settled.

Further, I find that the Ravinder Kumar in his cross-examination, admitted that accused is having no other transaction with their company. Learned lower Appellate Court held that from the perusal of

statement of account pertaining to Sat Parkash Ex.C9 and C10, it is clear that this account relates to chit fund vide which different amounts were deposited by Sat Parkash from time to time and the last entry is regarding 24th chit pertaining to March 2000. As per statement of accounts, different amounts were also credited in the account of Sat Parkash as dividend. The statement of account is not pertaining to any loan raised by the accused but the same is regarding chit fund/lottery system run by the complainant.

The Court also held that such type of transaction comes under the agreement by way of wager, which is void as per Section 30 of the Contract Act. It is further held that both the parties were involved in chit fund/lottery system.

The presumption under Section 139 of the Negotiable Instruments Act can be rebutted by raising probable defence. In the present case, the accused raised probable defence which is duly supported by case of the complainant itself as well as defence evidence. As there is no document on record to show the loan transaction, therefore, accused has been rightly acquitted.

In view of the above discussion, I find that the impugned judgment dated 20.12.2006 passed by learned Addl. Sessions Judge, Jalandhar, is correct, as per evidence and law and does not require any interference from this Court.

Resultantly, finding no merit in the present appeal, the same is dismissed.

May 07, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No