

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-A-694-MA-2013 (O&M)

Date of decision: 22.04.2019

Gurdev Singh

..... Appellant

Versus

Jarnail Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. J.S. Cooner, Advocate
for the appellant.

None for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Prayer for leave to appeal has been made against the judgment passed by learned Judicial Magistrate Ist Class, Ambala acquitting the respondent under Section 138 of the Negotiable Instruments Act, 1881.

The findings recorded by the Judicial Magistrate Ist Class reads as under:-

“Foremost requirement for the offence under Section 138 of the N.I. Act is that cheques must be issued by drawer (accused) to discharge the legally enforceable debt or liability. The complaint is silent about the fact that regarding which liability, accused issued the cheques in question. It is only in the affidavit of the testimony of the complainant i.e. CW1/A, complainant stated that there was a litigation pending between him and Gurbhag Singh and a compromise dated 13.12.2008 was effected between the parties and accused Jarnail Singh in order to discharge his legal liability, issued the cheques in question as per that compromise. Compromise dated 13.12.2008 is Ex.CW1/K upon the case file. In this compromise, it is clearly mentioned that the compromise was effected with regard to case

No.146. Now the question arises what is case No.146? Complainant side placed on record Mark-E i.e. copy of FIR No.146 dated 08.10.2008 involving Sections 419, 420, 465, 467, 468, 471 and 120-B. So, according to complainant himself, as per Ex.CW1/K, it was agreed that matter regarding FIR No.146 shall be compounded. Now the question arises, if the accused issued the cheques in this compromise, whether the same was issued to discharge the legally enforceable debt or liability or not? To this court, it cannot be said that as per compromise dated 13.12.2008, accused issued the cheques in question to discharge the legally enforceable debt or liability. In FIR No.146, sections involved were 465, 467, 471, IPC which are non-compoundable. As per the authority titled as J. Daniel Vs. State of Kerala & Ano. (Supra) if the cheques is issued for compounding a non-compoundable offence, liability arising is not a legally enforceable debt or liability. As per the authority, an agreement opposed to law or forbidden by law is not enforceable. It is specifically held that any liability or debt arising out of a contract or promise, which is unlawful or not legally enforceable, would not constitute an offence under Section 138 of the Act. So, by applying this authority, it is clear that the accused issued the cheques to discharge the liability, which is not enforceable and that is why Section 138 of the Act is not made out.

15. For the sake of arguments, even if it is presumed that the accused initially issued the cheques as per compromise, even then on the facts of the case, no offence under Section 138 of the N.I. Act is made out. As per Ex.CW1/K the purpose of issuing the cheques by accused Jarnail Singh is that earlier criminal litigation regarding FIR No.146 would be over. Ex.D2 is the order of the Hon'ble High Court dated 26.08.2010 passed in the petition under Section 482 Cr.P.C. for quashing the FIR No.146 dated 08.10.2008 filed by Gurbhag Singh against accused Gurdev Singh. This document has been admitted by CW1 complainant Guydev Singh during his cross-examination. Vide this order, Hon'ble High Cour held that counsel for complainant

Gurdev Singh submitted that there was no compromise between the parties and after considering this statement petition for quashing the FIR was dismissed. CW1 complainant Gurdev Singh during cross-examination also admitted the fact that compromise did not fructify. So, in these circumstances, authority titled as Lalit Kumar Sharma and Ano. Vs. State of U.P. & Anr. (Supra) is directly applicable. The cheques in question was issued in terms of the compromise. The cheque in question did not create a new liability. As the compromise did not fructify, the same cannot be said that cheque was issued towards payment of debt or liability. On the same analogy, Hon'ble Supreme Court of India in the authority titled as Lalit Kumar Sharma and Ano. Vs. State of U.P. & Anr. (Supra) held that it cannot be said that cheque was issued towards the payment of debt. So, it is admitted fact that the compromise dated 13.12.2008 i.e. Ex.CW/1K did not fructify between the parties and that is why no liability arises against the accused and accordingly, it cannot be said that the accused issued the cheque to discharge the legally enforceable debt or liability.”

Learned counsel appearing for the appellant although, made sincere attempt but failed to point out any perversity or material irregularity in the impugned judgment. Still further, it is not in dispute that the cheque in question was issued pursuance to a compromise dated 13.12.2008 with respect to case No.146. The aforesaid compromise did not fructify as the quashing petition filed on the basis of compromise was dismissed.

Hence, there is no ground to grant leave.

The pending misc. application, if any, shall stand disposed of.

Accordingly, the appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

22.04.2019

Dinesh Bansal

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No