

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1319-MA of 2018

DATE OF DECISION: JULY 17, 2019

GOKAL CHAND LIMBA

...APPLICANT

VERSUS

MAIN PAL

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. PEEUSH GAGNEJA, ADVOCATE FOR THE PETITIONER.

MANOJ BAJAJ, J.(ORAL)

Leave to appeal has been sought for by the applicant against the judgement dated 7.2.2018, passed by the Judicial Magistrate Ist Class, Abohar, District Fazilka, whereby the complaint filed by the applicant under Section 138 of the Negotiable Instruments Act was dismissed.

It was the case of the complainant that the accused issued a cheque bearing No.525621 dated 6.6.2016 for a sum of ₹7,50,000/- in favour of the complainant in discharge of his legal liability towards the complainant. The said cheque was presented for encashment before the Bank, but the same got dishonored with the remarks "Funds Insufficient". A legal notice dated 14.6.2016 was served upon the accused which was never responded and hence, the present complaint was filed.

Notice under Section 138 of Negotiable Instruments Act was served upon the accused, to which he pleaded not guilty and claimed trial.

In order to prove the case, the complainant examined himself as CW1 and Siri Chand, Bank Official as CW2 and thereafter, evidence of the

complainant was closed.

Statement of the accused under Section 313 Cr.P.C. was recorded and all the incriminating evidence was put to the accused, who denied the same and pleaded false implication. In his defence, the accused examined 4 witnesses.

The trial Court after examining the evidence put forth by the complainant as well as the accused held that the complainant failed to prove the guilt against the accused beyond reasonable doubt and proceeded to acquit the accused under Section 138 of the Negotiable Instruments Act.

Learned counsel for the applicant contends that the trial Court has committed an error in acquitting the respondent. The trial Court has grossly erred in not relying upon testimony of the complainant himself and CW2 Siri Chand, Bank Official and also failed to consider the evidence brought in that regard. It has been further contended that it was duly proved before the trial Court that the cheque in question issued by the respondent failed to serve the purpose.

I have heard learned counsel for the applicant and perused the case file.

The complainant examined himself as CW1 and reiterated his stand as taken in the complaint. Another official from Bank of Baroda, namely, Siri Chand was examined as CW2 who testified to the effect that the cheque in question was presented before the Bank. The accused in his defence examined as many as 4 witnesses, namely, DW1 Sukhdev Malethia, DW2 Rajinder Kumar, DW3 Sahib Ram and DW4 Nagin Kumar Goyal and

adduced evidence Exs.D1 to D6.

It was the categorical stand of the respondent that neither he borrowed any amount from the complainant, nor issued any cheque in favour of the complainant. He further stated that he was into Ahrat business with M/s Ramesh Kumar Bagga Ram and issued cheque to him only and the same was handed over to the complainant who misused the same.

DW1 Sukhdev Malethia, Member Panchayat, village Chuhriwala Dhanna by way of affidavit Ex.DW1/A stated that the respondent was a Ahrat with M/s Baggu Ram Ramesh Kumar and issued blank signed cheque to him, who handed over the same to the complainant.

The aforesaid version was corroborated by DW2, DW3 and DW4.

A perusal of the case file further reveals that the complainant has simply stated in his complaint that the cheque in question was issued by the respondent in discharge of his legal liability towards him. No date, place, purpose, writing for disbursing such a huge amount of ₹7,50,000/- has been explained by the complainant. The complainant being an Advocate was expected to reveal the material particulars in respect of the alleged transaction. However, in his cross-examination, he has failed to throw light on the material aspects of the transaction. The complainant has further failed to show any transaction that he withdrew the said amount and handed over same to the respondent. No material has also been brought on record to establish that under what circumstances the complainant advanced such a huge amount to the respondent.

This Court is of the opinion that the trial Court has given its careful consideration to the evidence on record particularly the defence evidence which is sufficient to rebut the presumption carried in the statute regarding issuance of cheque towards discharge of legal liability. The evidence of DW1 and DW2 is credible and trustworthy.

Apparently, the view adopted by the trial Court is a possible view based on correct appreciation of evidence. In view of the above, this Court does not find any reason to interfere in the well reasoned judgement passed by the trial Court.

Resultantly, leave to appeal is declined.

July 17, 2019
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No