

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

CRM-A-2278-MA-2016 (O&M)

Date of decision : 03.09.2019

Amit Kumar Goyal

...Appellant

Versus

Narinder Singh Dehal

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.B. Gautam, Advocate for the appellant.

Mr. Rahul Gautam, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Leave to appeal granted. With the consent of learned counsel for the parties, same is taken on Board for final disposal.

Complaint under Section 138 of the Negotiable Instruments Act was dismissed by the trial Court (Judicial Magistrate, Ist Class, Panchkula) and accused-respondent was acquitted.

As per the case of the prosecution, Sushil Kumar who was a family friend of petitioner-complainant had taken a loan of ₹17,50,000/- in October, 2013. However, after repeated request, the amount was not returned and some altercation took place between the complainant and Sushil Kumar and his friend. On 11.09.2014, with the intervention of elders, a compromise was arrived at and the complainant-petitioner asked for an apology due to unnecessary fight and the accused agreed to return the

amount of loan i.e. ₹17,50,000/- within 3 months. As a security, 3 cheques amounting to ₹17,50,000/- drawn by Narinder Singh in favour of complainant were handed over. This agreement is signed by Amit Kumar-petitioner, Sushil Kumar-loanee and Narinder Singh Dehal-respondent-accused. Respondent-accused has of course signed the same as witness No.1. Thereafter, Narinder Singh-accused-respondent had also signed the affidavit which although is not attested, admitting that he has handed over 3 cheques amounting to ₹17,50,000/- to the petitioner-complainant and undertook that if Sushil Kumar does not pay the amount, it shall be paid by respondent-accused.

It has been alleged that Sushil Kumar did not pay the amount and on presentation, 3 cheques in question were also dishonoured.

Notice as required under Section 138 of the Negotiable Instruments Act was sent to the accused-respondent wherein these facts were noted. It has been alleged that no reply to the notice was given.

When accused-Narinder Singh Dehal was examined under Section 313 Cr.P.C., he admitted that he has given the cheques to Amit Kumar as security. However, he stated that he has not received any amount and the amount was agreed to be paid due to pressure by the police at Police Station.

Learned Judicial Magistrate Ist Class, acquitted the accused by relying upon judgment passed by the Bombay High Court in the case of **Hiten Sagar and another Vs. IMC Limited and another, 2001 Criminal Law Journal 4311**. In the aforesaid judgment, Bombay High Court, in the facts of that case had held that in absence of any contract between the

drawer and original debtor, offence under Section 138 of the Negotiable Instruments Act is not established because the accused was only a surety. The Court also noticed that in the demand notice sent to the accused, it was mentioned that the drawer of the cheques had taken over the liability of petitioner Nos.2 and 3.

The aforesaid judgment passed by the Bombay High Court does not lay down as a ratio decidendi that apart from person who had taken the loan, other person cannot issue a valid cheque for discharge of the liability and if such person issues a cheque, it shall not be an offence under Section 138 of the Negotiable Instruments Act.

Section 138 of the Negotiable Instruments Act, provides that if a cheque is issued in discharge of a debt or other liability and the cheque on presentation is returned unpaid and in spite of notice, amount is not paid, the offence is deemed to have been committed. Sections 139 and 118 of the Negotiable Instruments Act, 1881 draws various statutory presumptions in favour of holder of a cheque. In the present case, there is an agreement between the parties which is signed by the respondent-accused. Still further, respondent has also given undertaking to the same effect in the form of affidavit which of course is not attested from the Notary Public. However, admissibility of such affidavit would be examined by the trial Court at an appropriate stage.

Judicial Magistrate committed the material irregularity in following the judgment of Bombay High Court in the case of Hiten Sagar and another (Supra) without carefully reading the facts of the aforesaid case.

Keeping in view the aforesaid facts, impugned judgment is set

aside. Case is remitted back to the Judicial Magistrate Ist Class to re-decide the matter. Order of remand has been passed keeping in view the fact that other defence taken by the accused, that agreement in question and the affidavit were got signed under police pressure, has not been examined by the trial Court.

Parties through their counsel are directed to appear before the trial Court on 20.09.2019.

It shall be open to the accused to defend the criminal case on all permissible grounds available under law.

In view of the above, the present petition is disposed of.

03.09.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No