IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-2627-MA of 2017

DATE OF DECISION: JULY 15, 2019

THE PANIPAT DISTRICT PRIMARY CO-OP. AGRI. & RURAL DEVELOPMENT BANK LTD. ...APPLICANT

VERSUS

SATPAL ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. ARUN SINGAL, ADVOCATE FOR THE APPLICANT.

MANOJ BAJAJ, J.(ORAL)

Leave to appeal has been sought for by the applicant against the judgement dated 3.10.2017, passed by the Judicial Magistrate Ist Class, Panipat whereby the respondent has been acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881.

The complainant brought a complaint under Section 138 of the Negotiable Instruments Act, 1881 on the ground that the brother of the accused-respondent took a loan of ₹1 lakh from the applicant for the purposes of repair of house and had agreed to repay in installments. The loan was advanced on 7.9.2011 and 13.9.2011. In order to repay the installments, the accused issued a cheque bearing No.118727 dated 10.2.2015 for a sum of ₹58,000/- drawn on The Panipat Central Co-op. Bank, Branch Bapoli which, on presentation, was returned by the banker with the remarks “Fund is not sufficient” through its memo dated 4.9.2013. The statutory notice dated 5.3.2015 was also served upon the respondent, however, the same was not adhered to as no payment was made by accused thereby compelling the complainant to institute the complaint.

After recording the preliminary evidence, the trial Court passed the summoning order dated 24.3.2015 and after appearance of the respondent, he explained that the loan was obtained by the brother of the accused and the cheque was given as a security which was misused by the complainant-Bank. After examining the evidence on record, the trial Court proceeded to acquit the accused. Aggrieved against the said judgement, the present application for leave to appeal has been filed by the complainant-Bank.

After hearing learned counsel for the applicant, this Court finds that the reasoning given by the Court is based on vital admissions suffered by the complainants-witness. No doubt the cheque was issued by the accused, but the presumption carried under the statute was rebutted by complainant's own admissions, as noticed by the trial Court specifically. The relevant observations of the trial Court are extracted below:-

> "*16. CW1 Ajit Kumar in his cross-examination has stated that the cheque in question was given by the accused to the complainant bank at the time of advancement of the loan to the brother of the accused. The loan was allegedly advanced to the brother of accused in the year 2011 and its means that the cheque in question was taken in the year 2011 itself by the complainant bank. CW1 has himself admitted that the complainant bank had taken the cheque in question for re-payment of the loan. In the present case, it is alleged that the brother of the accused obtained a loan for purpose of Repair of House Scheme from the complainant bank vide documents Ex.C10 and accused Satpal stood guarantor of his brother. In*

the year, 2015 accused issued cheque Ex.C1 in favour of the Complainant bank to pay al the debt, but the said cheque stood unpaid/dishonoured vide memo Ex.C2. Thereafter, a legal notice i.e. Ex.C4 was sent to the accused calling him upon to make the payment, but despite the stipulated period, the payment was not made. The existence of debt of the brother of the accused has not been denied by the defence side.

17. Learned counsel for the Complainant bank while advancing arguments has fairly admitted that the cheque in question was obtained as a security at the time of advancement of loan. The Hon'ble Supreme Court in case titled as ***M.S. Narayana Menon @ Manni Vs. State of Kerala & Ors. 2006 (6) SCC 39****, has held that the cheque issued for security or for any other purpose would not come within the purview of Section 138 of the Act. The Similar view was taken by the Hon'ble Allahabad High Court in* ***Vijay Kumar Upadhyay Vs. State of U.P. & Anr. 2013(2) CCJ 325*** *while holding that the issuance of security cheque are not covered under Section 138 of the act. As the security cheque are not covered under the said section, so, the bouncing of cheque, which was issued as a security cheque is not punishable under Section 138 of the Act. A similar view has been taken by Hon'ble Punjab & Haryana High Court in* ***Hissar Bankman Co-operative Vs. Krishan Kumar 2013(1) NIJ 362*** *in a recent judgement that bouncing of cheque given as a security cannot be said to be the cheque* *given to discharge the legal obligation. In a recent judgement of Hon'ble Punjab and Haryana High Court, titled as **Chhabra Fabrics Pvt. Ltd. Vs. Bhagwan Dass, Proprietor of Dhingra Handicrafts 2015(1) CCC 239** has held that the object of Section 138 of the Act is to avoid malignant trade practices of indiscriminatory issuing cheque without Insufficient funds. When the cheque was handed over to the Complainant as a security cheque and was not meant enforcement of debt the same does not attract of the provision of 138 of the Act. In view of the above discussed position of law, in the considered opinion of this Court, since it has been accepted by the learned Counsel for the Complainant that the cheque in question was accepted by the Complainant bank as a security at the time of advancement of loan, no offence under Section 138 is made out against the accused.*"

A perusal of the above reveals that the view adopted by the trial Court is a possible view based on correct appreciation of evidence which does not warrant any interference.

Resultantly, leave to appeal is declined.

July 15, 2019 **(MANOJ BAJAJ)**
Gulati **JUDGE**

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No