

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRM-A-2644-MA of 2017**

DATE OF DECISION: AUGUST 19, 2019

RASHPAL SINGH

...APPLICANT

VERSUS

KALU RAM

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.**

PRESENT: MR. MOHIT JAGGI, ADVOCATE FOR THE APPLICANT.

**MANOJ BAJAJ, J.(ORAL)**

Leave to appeal has been sought for by the applicant against the judgement dated 26.10.2017, passed by the Judicial Magistrate Ist Class, Rajpura, District Patiala, 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.000452 dated 8.3.2016 for a sum of ₹1,00,000/- 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 16.03.2016 was served upon the accused which was never responded and hence, the present compliant was filed.

After examining the pre-charge evidence, the trial Court finding *prima facie* commission of offence punishable under Section 138 of Negotiable Instruments Act, 1881 proceeded to summon the accused.

In order to prove the case, the complainant examined Kaka Ram Clerk as CW1 and himself as CW2 and thereafter, the 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 innocence.

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 the acquitting the respondent, as it has ignored the evidence on record including the deposition of the complainant. He submits that the complainant had proved the required essentials in respect of the alleged crime and therefore, the judgement of acquittal is bad in law which requires interference by this Court.

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

It was the categoric stand of the respondent that he never borrowed any amount from the complainant. However, he used to purchase iron sheets from him and his accounts with the complainant were all cleared (Ex.D1) and the impugned cheque was taken from him by the complainant as security for business transactions, who had misused the same.

A perusal of judgement passed by the trial Court reveals that the

complainant failed to prove the liability towards accused-respondent. Further, the complainant was cross-examined at length and the the relevant observations made by the trial Court are extracted below:-

*“13. ....Merely by claiming that some amount was lying in his house and he has given the same to the accused is not sufficient to prove the guilt of the accused as it is the bounden duty of the complainant to prove on record his friendly relations with the accused and also some independent witness who could prove on record that the alleged transaction took place in his presence. Moreover, the complainant being a prudent person might have executed any writing relation to such advancement as both the parties are admittedly having business relations. In nutshell it is the duty of the complainant to prove on record that he has advanced the amount of Rs.1,00,000/- to the accused out of friendly relations but the complainant has not been able to prove any documentary proof as well as any oral evidence to some independent witness who could prove on record the above said transaction between the parties. On the other hand, the accused has taken the plea that the said security cheque has been misused by the complainant despite settlement of entire account with him and also the detailed cross examination of the complainant clearly shows that there was some business relations in between the parties.*

This Court is of the opinion that the trial Court has given its

careful consideration to the evidence on record particularly the stand of the accused which is sufficient to rebut the presumption carried in the statute regarding issuance of cheque towards discharge of legal liability.

It is clear that the view adopted by the trial Court is a possible view based on correct appreciation of evidence, therefore, 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.

August 19, 2019  
Gulati

**(MANOJ BAJAJ)**  
**JUDGE**

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No