

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

CRA-AS-203-2019

Date of decision-04.09.2019

Jai Kishan

....Appellant

Vs.

Balwan Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Ms. Mannat Anand, Advocate for the appellant.

MANOJ BAJAJ, J.

Jai Kishan-applicant has preferred this appeal to challenge the order dated 07.05.2019 passed by the learned Judicial Magistrate First Class, Ambala whereby the complaint registered under Section 138 of Negotiable Instruments Act, 1881 was dismissed and accused person was discharged.

Learned counsel for the appellant does not dispute this fact that the complaint was directed against the accused-Balwan Singh son of Gurpal Singh, however, the account from which the cheque was issued belonged to his wife, namely, Gurjit Kaur. The evidence in this regard was produced by the complainant himself and the trial Court has discussed this aspect in paragraph 14 of the judgment. The same is reproduced below:-

“After hearing both the ld counsels for the complainant and accused and having gone through the record available on case file, this court is of the considered and confirmed view that the complainant has miserably failed to prove the guilt of the accused and on the other hand, the accused has been able to rebut the presumptions arising against him. It is admitted fact between the parties that the cheque in question which was allegedly issued by the accused to the complainant was not pertaining to bank account maintained by the accused but it was pertaining to the account maintained by the

wife of the accused. The cheque in question is of Punjab National Bank. Official of Punjab National Bank Sh. Rajiv Kumar has been examined as CW3. This witness categorically stated that he has brought the record pertaining to the account number mentioned on the cheque i.e.1944000100140578. He has further stated that this is the account being maintained by Gurjeet Kaur wife of Balwan Singh and that cheque Ex.C1 and memo Ex.C2 are pertaining to the account of Ms. Gurjit Kaur. The same has also been admitted by the parties that the cheque in question pertains to the account of wife of the accused.”

Learned counsel is enable to refute the above observation with any material to establish that the observations are against the evidence. At the same time, she has argued that it is a case of cheating which is punishable under Section 420 IPC and the trial Court ought to have taken cognizance of this fact to prosecute the accused.

This Court does not find any merit in the argument as it was not a case pleaded by any of the parties particularly when the cheque in question was not dishonoured on the ground that the signatures on the cheque do not tally. The cheque in question was dishonoured on account of insufficient funds. It is apparent that the presumption carried with the instrument stood rebutted by the evidence of the prosecution itself and therefore, the view adopted by the trial Court is based on correct appreciation of material on record. Therefore, no interference is called for.

Petition is dismissed.

(MANOJ BAJAJ)
JUDGE

04.09.2019

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No