

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. A-247 of 2019

Date of Decision: December 05, 2019

Raj Kumar Goel

.....Appellant

versus

Ravi Kant

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Puneet Jain, Advocate
for the appellant

Sudhir Mittal, J.

A complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') has been dismissed vide the impugned judgment, leading to the filing of the present appeal.

2. In the complaint, it was alleged that the appellant had friendly relations with the respondent on account of which various sums of money were advanced to him between the period April 2015 and October 2015. In discharge of his liability, the respondent issued a cheque of Rs. 15.50 lacs dated 20.01.2016 (Ex. C-1) but the same was dishonored. The memo of dishonor is dated 10.03.2016. A notice dated 14.03.2016 under Section 138 of the Act was sent to the respondent through registered post but no reply was received and this led to the filing of the complaint.

3. Notice of accusation dated 06.09.2016 was given to the respondent, to which he pleaded not guilty. After completion of prosecution evidence statement under Section 313 Cr.P.C. of the respondent was recorded. He opted to lead

evidence in defence but apart from examining himself, no other defence evidence was led.

4. Learned counsel for the appellant submits that the appellant maintained a cash book in the regular course of business which is Ex. C-9 on the record. The said cash book records payment of Rs. 8 lacs on 02.05.2015 and Rs. 7.5 lacs on 15.06.2015. A balance sheet for the accounting year 2015-16 has also been placed on record as Ex. C-8 in which loan of Rs. 15.50 lacs is shown as outstanding. The respondent has admitted his signature on the cheque. In the light of this evidence as well as presumption against the accused under Section 139 of the Act, the trial Court was in error in dismissing the complaint. He relies upon ***Rohitbhai Jivanlal Patel vs. State of Gujarat and another, 2019(2) RCR(Criminal) 559.***

5. A perusal of the impugned judgment shows that the trial Court drew an initial presumption under Section 139 of the Act against the respondent but thereafter held that that the presumption stood rebutted on preponderance of probabilities. In his defence statement, the respondent had deposed that he had borrowed small sums of money from the appellant but the same had been returned. The cheque in dispute was taken as security for the re-payment of money borrowed by him and the same has been misused by the appellant after return of the money. No further evidence in defence has been led by him. Under the circumstances, it needs to be examined whether the trial Court was justified in returning a finding that the presumption under Section 139 of the Act stood rebutted.

6. In the complaint, the appellant had pleaded that different sums of money were advanced between the period April 2015 and October 2015, however, the cash book Ex. C-9 records two payments only dated 02.05.2015 and 15.06.2015. The evidence is, thus, contrary to the pleaded case of the appellant.

Further, in his cross examination he stated that the money was advanced in cash after borrowing the same from his father who was earlier in business but had wound up the business in the year 2005. However, no proof of the capacity of his father to lend such a huge sum of money was placed on record. If the father had wound up his business, it was very easy for the appellant to place on record his bank statement to show that he was possessed of sufficient funds at the relevant time. Further, the body of the cheque was filled up in a different ink and in a different hand. Thus, the trial Court was justified in finding that the appellant had failed to establish the source of funds and that the defence of the respondent inspired confidence. Learned trial Court was also right in not placing reliance upon the cash book Ex. C-9 as well as balance sheet Ex. C-8 being self created documents.

7. The judgment in ***Rohitbhai Jivanlal Patel (supra)*** does not help the case of the appellant as in the said case there was a crucial piece of evidence in the form of a deed executed by the accused on a stamp paper of Rs. 100/- admitting the issuance of cheques by him. It was primarily in the light of this evidence that the Supreme Court found that the presumption under Section 139 of the Act did not stand rebutted. Having examined the evidence on record in detail, the Supreme Court found that absence of evidence regarding source of funds was not relevant. The facts in the present case are totally different.

8. At this stage, learned counsel for the appellant has placed reliance upon a single Bench judgment of this Court in ***Manmohan Singh vs. Daljit Singh Chadha, 2019(4) RCR(Criminal) 657*** to argue that even if the handwriting in the body of the cheque is different and it is in a different ink, it would not result in acquittal of the accused. This is a correct proposition of law provided the complainant is able to prove advancement of money. The appellant has, however,

failed to prove advancement of money and it is in the light of this circumstance that the trial Court has concluded that difference in the handwriting in the body and the cheque leads to the conclusion that the same was a security cheque. Accordingly, the finding can not be held to be erroneous.

9. There is no merit in the appeal and the same is dismissed.

December 05, 2019

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No