

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

CRA-S-1781-SB-2010

DATE OF DECISION :- January 08, 2020

Manohar Lal

...Appellant

Versus

Shri Jagjit Singh (Naya)

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Jagram Singh Cooner, Advocate for the appellant.

This appeal is directed against the judgment dated 26.8.2008 passed by Judicial Magistrate First Class, Ambala City vide which he had dismissed complaint under Section 138 of the Negotiable Instruments Act filed by complainant Manohar Lal against accused Jagjit Singh.

Briefly stated the facts of the case are that complainant Manohar Lal had brought the complaint in question against accused Jagjit Singh on the allegations that on 9.10.2003 at instance of accused, who was acquainted with him earlier, he had advanced a loan of Rs.40,000/- to him. At that time the accused had promised to return the loan amount within a period of two months and in pursuance to fulfil his promise and to discharge his part of liability in the month of December 2003 he had issued a cheque bearing No. 571361 dated 22.12.2003 drawn on Oriental Bank of Commerce in the sum of Rs.30,000/- promising that on presentation the cheque would be encashed and that he would pay the remaining amount of Rs.10,000/- within one month. However,

when the complainant presented the cheque for encashment to his banker on 2.1.2004 the said cheque was dishonoured due to insufficiency of the amount. The banker accordingly informed the complainant. The complainant approached the accused. The accused requested that the cheque in question be presented again in the month of March 2004 promising that the cheque would be encashed at that time. The complainant did so, however, the old cheque was represented and the cheque was dishonoured on account of insufficient funds in the account of accused. The complainant was informed by the banker vide memo dated 10.3.2004. Thereafter the complainant served requisite notice upon the accused calling him to pay the cheque amount within 15 days of receipt of notice dated 12.3.2004 but in spite of above said notice the accused failed to do so. Thereafter the complainant brought the complaint before JMJC, Ambala City.

After recording preliminary evidence accused was summoned. He put in appearance. Notice of acquisition of funds under Section 138 of Negotiable Instruments Act was served upon him to which he pleaded not guilty and claimed trial. The complainant led evidence.

Statement of accused was recorded under Section 313 Cr.P.C. Denying the allegations he led evidence in defence also. After hearing arguments learned Judicial Magistrate First Class, Ambala City vide impugned judgment dismissed the complaint leaving the complainant aggrieved, who has approached this Court by way of filing the present appeal.

I have heard learned counsel for the appellant besides going through the record.

A perusal of the impugned judgment goes to show that the main reason for dismissal of the complaint was that no written document was

executed at the time of advancement of the alleged amount, no rate of interest was fixed and the complainant in his statement had showed ignorance whether accused had left 24 quintals and 20 Kgs paddy in the shop of his son on 20.12.2001, value of which was Rs.23,000/-. Further more it was complainant who had introduced the accused while opening his account with the bank from which the cheque in question was issued. It has further been noticed that complainant could not prove that he had so much money advanced to the accused. Another major factor taken into consideration is that as per certified copy of the complaint Ex.DW1/A filed by Brij Mohan son of Manohar Lal who is complainant in this case against the accused Jagjit Singh for recovery of Rs.95,000/- advanced to the accused in the month of August 2007 in respect of cheque bearing No. 571364 plea of the accused that at the time of opening of the account, cheque book was retained by Manohar Lal can be believed because when the accused had failed to pay the amount of Rs.40,000/- to the complainant in the year 2003 then again the advancement of Rs.95,000/- to the accused was unbelievable and further more the cheque in respect of the complaint in question had been filed is of the same series. The judgment passed by learned Magistrate is quite detailed, well reasoned and does not suffer from any illegality and infirmity which might have called for interference by this Court by way of acceptance of the appeal.

The appeal is without any merit and is dismissed accordingly.

(H.S. MADAAN)
JUDGE

January 08, 2020
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No