

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2117-2018

Date of Decision: 20.01.2020

Rajesh Devi

.....Petitioner

Versus

Satbir

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Manoj Sharma, Advocate, for the petitioner.

Harnaresh Singh Gill, J.

Challenge in the present revision petition is to the judgment dated 9.2.2018 passed by the learned Additional Sessions Judge, Rohtak, whereby while setting aside the judgment of conviction and order of sentence dated 27.01.2016 passed by the learned Judicial Magistrate, Ist Class, Rohtak, the respondent was acquitted of the charge framed against him.

A complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), was filed by the petitioner-complainant with the averments that the respondent had purchased a Trailer bearing Registration No. HR-46B-5726 from the complainant on 24.05.2006 and that in this regard an agreement of the even date was also executed between the parties. As per the said agreement, the respondent had undertaken to pay the outstanding instalments of the vehicle purchased by him from the complainant. The complainant had purchased the said vehicle by availing of a loan from the

IndusInd Bank. However, in contravention of the agreement dated 24.05.2006 entered between the parties, the respondent did not pay the instalments of the loan and the complainant had got cleared the said loan through her guarantor Sh. Ram Bhaj by way of a full and final settlement with the Bank in the year 2011. The respondent against the said liability, on 30.06.2013 issued a cheque for an amount of Rs.10,75,000/- drawn on the Central Bank of Sanjarwas (Bhiwani), but when presented for encashment, the said cheque got dishonoured.

On the basis of the evidence led by the parties and after considering the rival contentions, the learned trial Court found the respondent guilty for the offence under Section 138 of the Act and he was accordingly sentenced to undergo simple imprisonment for six months and also to pay 50% of the cheque amount by way of compensation to the complainant and, in default thereof, to further undergo simple imprisonment for two months.

However, in the appeal filed by the respondent against the judgment and order passed by the trial Court, the learned Additional Sessions Judge, Rohtak, set aside the findings recorded by the trial Court and acquitted the respondent of the charge framed against him.

The learned trial Court had recorded the finding of guilt by holding that once the cheque was in possession of the complainant and the signatures thereon were never disputed by the respondent, there was a presumption of the legal liability against the respondent. However, the learned appellate Court,

while scrutinizing the evidence on record, set aside the said finding and arrived at a conclusion that admittedly, the amount of loan was paid by the guarantor of the complainant i.e. Sh. Ram Bhaj pursuant to the Arbitral Award dated 28.7.2009 (Ex.CW3/B). It was further found that as per the case of the complainant, the respondent had defaulted in making payment of the instalments of the loan in the year 2006 itself. Thus, non initiation of any kind of proceeding(s) by the complainant against the respondent till the filing of the complaint, created a doubt about the credibility of the claim of the complainant. It was further found that issuance of a cheque in the year 2013 in respect of the alleged liability arose in the year 2006, would not, in any way, term the said liability as a legally recoverable debt. The relevant extracts from the findings recorded by the learned appellate Court would read as under:-

“13. There is another aspect of this matter. This court had examined Jai Parkash, Senior Manager, Central Bank of India, Branch Sanjarwas, Charkhi Dadri as Court Witness No.1. He had brought the records pertaining to the Old Account No. 4705 of the appellant from which the cheque Ex.C.1 had been issued. As per his deposition, this account has never been operated by the appellant. He produced the attested copy of the entry regarding issuance of cheque book as, Ex. P.1. As per this record only a single cheque book was issued to this account. The same was issued on 20.05.2006. No other cheque book had ever been issued qua this account. Though the account had never been closed, it was inoperative. The statement of account produced by this witness commenced from 01.02.2010 to 30.01.2018 and the account had been

inoperative for this entire period and even prior thereto but the previous record had not been produced. It is obvious that when the cheque, Ex.C.1, was issued on 30.06.2013, the account had been inoperative for a minimum period of 3 years as per the testimony of the court witness No.1-Jai Parkash and the statement of account Ex.P.2.

This fact also lends further credence to the version of the appellant that the respondent may have forcibly obtained blank signed cheques of the complainant which he has subsequently misused. The onus was heavily upon the complainant to show how this cheque came into his possession and why no action was taken by him against the appellant in the very first instance when the appellant allegedly defaulted in making the payment of instalments on behalf of the respondent-complainant to the IndusInd Bank. She has absolutely failed to discharge this onus.

The totality of the facts and circumstances on record clearly indicate that there was no legally recoverable debt against the appellant. The cheque return memo Ex.CW2/B is dated 09.07.2011 and even from that date the instant complaint has been lodged beyond the period of limitation. In these circumstances, it is evident that the learned trial Court certainly erred in convicting the appellant by holding him guilty for dishonour of a cheque in discharge of a legal liability, whereas in fact no such liability existed against him.”

Even if it is taken that the respondent had, vide agreement dated 24.05.2006, agreed to make the payment of the instalments of the loan, then also the cheque issued by the respondent on 30.06.2013 would not make the same as legally recoverable debt, particularly when such debt becomes time barred. There is no acknowledgement on behalf of the

respondent from the period 2006 till 2013 regarding the payment of the alleged debt.

Similar issue was considered by this Court in Manjit Kaur Vs. Vanita, 2010(3) RCR (Criminal) 574. In the said case, a cheque issued in the year 2003 in respect of the loan advanced in 1999, was held not be legally enforceable. It was held as under:-

“9. Adverting to the facts of the instant case, the cheque was issued on 28.6.2003. On reckoning, it works out that the loan was advanced somewhere in June, 1999. A meticulous perusal of the evidence on record would reveal that the appellant has not produced any document or other evidence revealing that the accused-respondent had acknowledged the debt within three years from the date of loan. Thus, by the time, the cheque was issued, the debt became barred by limitation because no acknowledgment was obtained before the expiry of three years from the date of loan. Section 18 of the Limitation Act, 1963 deals with the theory underlying the doctrine of acknowledgment. The true principle underlying an acknowledgment is that it merely renews the liability and gives the creditor or claimant a fresh period of limitation according to the nature of the liability which exists at the time of the acknowledgment. An acknowledgment cannot be regarded as evidentiary of the debt but an acknowledgment that a person owes money to another, a specified person is good evidence of his owing money to another. The dishonoured cheque Ex.P1 cannot be treated as acknowledgment under Section 18 of the Limitation Act, since the acknowledgment should be before the period of limitation is over and that it should be in writing. Thus, it cannot be said that the appellant has been able to prove that Ex. P1 was in relation to a legally enforceable debt or liability in law as the same was admittedly issued after more than three years of the advancement of the alleged amount as loan. So, if the matter is viewed in the background of the observations

rendered in re: Ashwani Satish Bhat (Mrs.) (supra), it turns out that the accused-respondent had issued the cheque in 2003 when the debt had already become time barred. The acknowledgment of the alleged amount in 2003 was not valid acknowledgment under Section 18 of the Limitation Act and consequently, it was not a legally enforceable debt.”

In view of the above, I do not find any patent illegality or perversity in the impugned judgment passed by the learned appellate Court. Hence, the revision petition, being bereft of any merit, is hereby dismissed.

(HARNARESH SINGH GILL)
JUDGE

20.01.2020
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No