IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A No.257 of 2019 (O&M)
Date of Decision : 15.09.2022

Amritpal Sharma

.....Applicant

versus

Jagdeep Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Pardeep Bajaj, Advocate
for the applicant.

<u>PANKAJ JAIN, J.</u>

Applicant seeks leave to appeal against judgment dated 6th of January, 2018 passed by Judicial Magistrate 1st Class, Barnala whereby the complaint preferred by the applicant/complainant against the respondent/accused under Section 138 of the Negotiable Instruments Act, 1881 stands dismissed.

2. Complaint was preferred claiming that the accused availed loan of Rs.5,31,000/- from the complainant. He agreed to repay the same along with interest @ 18% per annum. In discharge of his partial liability the accused issued a cheque No.001660 dated 10th of February, 2015 for the principal amount of Rs.5,31,000/- drawn on Axis Bank Ltd, Branch Barnala at Barnala out of his account No.913010010264256. The cheque got dishonoured for insufficient amount vide memo dated 11th of March, 2015. After serving legal

notice the present complaint was filed. After trial, the Court found that the statutory presumption in favour of cheque stands rebutted that too on the basis of the admissions made by the complainant during his cross-examination. Trial Court held that :

> *"10. Now one thing is clear that presumption under section 139 of negotiable Instrument Act 1881 is available to complainant that he is holding the cheque under consideration for the discharge, in whole or in part, of debt or other liability of accused. Though counsel for complainant argued that defense has failed to rebut the presumption available to complainant but this point of argument of counsel for complainant is not sustainable because numerous facts have come on record vide which presumption has successfully rebutted by defense. It is settled law that admission is best evidence and facts admitted need not to be proved. Though complainant side argued that no evidence has brought on record to substantiate the defense plea raised vide suggestions given to the complainant during his cross-examination, but court has hitch to say that defense evidence was not required in view of admission of complainant during cross-examination. The complainant was cross examined on 13.07.2017 and he specifically admitted that Rs. 5 Lakhs was not A given by him to accused as loan rather his brother was working with accused and only his brother is knowing about alleged amount given to accused. Not only this rather complainant specifically deposed that no money was given by him to accused. Now court come to complaint as well as affidavit annexed with complaint when complaint was led by complainant . It is averred in complaint and above said affidavit accused borrowed amount Rs.*

> *5,31,000/- from complainant and same version was repeated by complainant in his examination in chief when duly sworn affidavit Ex.CW 3/A was tendered in evidence. There is no explanation from complainant side that how new version has come on record during cross-examination of complainant if amount was really borrowed by accused from complainant. There is no explanation from complainant side that why it was not disclosed in complaint that amount was not given by complainant rather same was given by brother of complainant. Cheque under consideration was allegedly issued on 10.02.2015 but on the other side, complainant is admitting in cross-examination that his joint business with accused had ended in December 2014 and he was not in good terms with accused since December 2014. Now case of complainant has become more suspicious because admittedly no case has filed by complainant for settlement of accounts against accused and it is not believable that cheque of heavy amount was issued by accused on 10.02.2015 despite the fact that parties to complaint were not in good terms since December 2014. Complainant also admitted that he was getting Rs. 5,000/- per month as salary and alleged amount was not paid by him rather by his brother Sukhwinder Sharma. In view of above said discussion, one thing is pretty much clear that false story has mentioned by complainant in complaint and that false version of complainant has brought into light by cross-examination of complainant. Resultantly, case of complainant has failed and accused is acquitted by giving benefit of doubt. His bail bonds and surety bonds stand discharged. File be consigned to the record room."*

3. Ld. Counsel for the applicant could not dispute the fact that

the complainant in his cross-examination has specifically admitted that the loan as alleged in the complaint was never extended to the accused. Rather the complainant changed his stand and stated that his brother was working with the accused and only his brother can explain about the amount.

4. Complainant further admitted in his cross-examination that the accused and the complainant were joint in business. And they ended their partnership in December, 2014 on good note. Thus, Trial Court was right in holding that accused has raised a probable defence and the story put-forth by the complainant having been demolished by his own admission, the statutory presumption under Section 139 and Section 118 stands rebutted.

5. As a sequel of the discussion held hereinabove, no fault can be found with the judgment passed by the Trial Court dismissing the complaint filed by the applicant u/s 138 of the N.I. Act. Consequently, the present leave to appeal stands dismissed.

September 15, 2022 **(PANKAJ JAIN)**
Dpr **JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No