IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1586-MA-2018 (O&M)
Date of decision: 18.02.2022

Parkash Chand

....Applicant/Appellant

Versus

Jai Parkash @ Dr. Parkash @ Raju

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Aditya Jain, Advocate
for the applicant/appellant.

ARVIND SINGH SANGWAN J.

Prayer in this appeal is for setting-aside the impugned judgment dated 20.12.2017, passed by the trial Court, dismissing the complaint filed by the applicant/appellant under Sections 406, 420, 467, 468, 471, 384, 506 IPC.

Brief facts of the case, as noticed in the impugned judgment, are as under:-

"2. Complainant has submitted that accused and complainant are co-villagers and having cordial relations with each other. On 14.08.2007, complainant borrowed a sum of Rs. 30,000/- from the accused as friendly loan in the presence of one Sant Ram son of Gazi Ram and Leelu @ Hari Chand son of Battan of the same village and at the time of issuing loan of Rs.30,000/-, accused asked for a blank signed cheque on account of security from complainant and in compliance of above said demand, complainant issued a blank signed cheque bearing No.

660484 drawn on Syndicate Bank, Mini Secretariat, Sector-12, Faridabad as security to the accused. In the month of December, 2007 as per promise, complainant returned the entry loan amount to the accused and asked for the above said blank signed cheque given towards security. But accused started putting off the matter on one pretext or the other. To the utter surprise and dismay, complainant received a legal notice dated 18.03.2009 issued by Sh. Purushottam Bhardwaj, Advocate levelling false and frivolous allegations on the complainant. After having received the legal notice it has come to the notice of the complainant that accused by playing fraud at the back of the complainant without his consent has presented the said cheque in his bank for getting the same encashed after filing name, date and amount at his own for his wrongful gain and wrongful loss to the complainant. The above said legal notice was duly replied by the complainant through his counsel dated 02.04.2009. After receiving the notice, complainant visited the house of the accused and requested him to return the blank signed cheque. Then accused after making him sit in the room threatened to give another sum of Rs. 10,000/- then he will return the above said blank signed cheque to complainant. The accused also held out threats that if complainant does not oblige him, then complainant will be done to death and he will level such allegations that will be proved fatal for his services. Therefore, the present complaint.

3. After pre-summoning evidence, accused was summoned under section 406, 384, 506 of IPC. Thereafter accused put his appearance and then he was released on bail. In pre-charge evidence complainant examined following witnesses :-

- *CW : Om Parkash*

- *CW-1 : Hari Chand*
- *CW-2 : ASI Daya Nand*
- *CW-3 : Tej Singh, Stamp Vendor, Faridabad*
- *CW-4 : Jyoti Goyal, Depty Manager, Axis Bank, Delhi*
- *CW-5 :Ramesh Kumar, Clerk, Syndicate Bank, Faridabad*
- *CW-6 : S.P. Singh, Handwriting expert*
- *CW-7 : Rahul Dev*

Beside these following documents are tendered:-

- *Ex.CW3/A : Copy of FIR*
- *Ex.CW3/A : Copy of Register*
- *Ex.CW4/A : Copy of ledger account*
- *Ex.CW5/A : Cheque (tag in cancellation report of FIR no. 222)*
- *Ex.CW5/B : Copy of office order*
- *Ex.CW5/C : Copy of saving account*
- *Ex.CW6/A : Expert report*
- *Ex.CW7/A : Affidavit*
- *Ex.P1 : Legal notice*
- *Ex.P2 : Reply of legal notice*
- *Ex.P3 : Receipt*
- *Ex.CA : Certified Copy of Charge*
- *Ex.CB : Copy of FIR*
- *Ex.CC : Copy of order dated 22.01.2013*
- *Ex.CD : FIR*
- *Ex.CE : Copy of order dated 04.10.2008*
- *Ex.CF : Copy of Pws*
- *Ex.CG : Copy of statement of Arjun*
- *Ex.CH : Application to bank*
- *Ex.CI : Copy of statement of account*
- *Mark-A1 : Copy of order of Hon'ble High Court*
- *Mark-B : Application*

However following documents are put up by Learned counsel for accused during cross examination of *complainant.*

• Ex.D1 : Complaint

• Ex.D2 : Legal Notice

• Ex.D3 : Copy of inquiry report

• Ex.D4 : Copy of order

• Ex.D5 : Copy of Order of Hon'ble High Court

• Ex.D6 : Copy of settlement.

Thereafter complainant has closed his pre-charge evidence vide separate statement.

4. Statement of accused under Section 313 Cr.P.C. was recorded in which entire incriminating material came in prosecution evidence was put to accused to which he denied all the allegations and pleaded that he has been implicated in a false case. Accused opted to lead evidence in defence but does not lead any evidence despite opportunity. However Learned cousnel for accused tendered following documents :-

• Ex.D7 : Copy of order dated 31.01.2017

• Ex.D8 : Copy of order dated 07.01.2011 Accused himself closed his defence evidence, vide separate statement."

The trial Court, thereafter, recorded a finding that though the complainant has examined a Hand-writing Expert (CW-6), who has submitted a report Ex.CW-6/I, regarding the signatures on the cheque, however, the complainant has admitted his signatures on the cheque, in question. The trial Court has also recorded a finding that the only dispute raised by the complainant that he has not filled up the date, name and amount on the cheque, which has been misused by the accused. The trial Court has further recorded a finding that earlier an FIR No.222 of 2019, registered at Police Station Central Faridabad, was registered against the complainant by the accused, however later on, some compromise (Ex.D-6) was effected in which the complainant while appearing as a witness has admitted his signatures, in the cross-examination. The trial Court has also recorded a finding that as per the compromise (Ex.D-6), nothing has come that the accused has misused the cheque, in question.

Counsel for the applicant/appellant has argued that, in fact, the appellant/complainant has lead sufficient evidence that the accused has misused the cheque, which was given as a security cheque as the appellant has borrowed a friendly loan of Rs.30,000/-, which was repaid, however, the cheque was misused though, the complainant has stopped the payment in the year 2008.

After hearing the counsel for the applicant and going through the impugned judgment, I find no illegality in the same.

The complainant has admitted his signatures on the disputed cheque as well as on the compromise (Ex.D-6), which was effected between him and the respondent/accused and now in the present complaint, the complainant for the first time is raising an objection that he has signed a blank cheque and has not read the contents of the compromise (Ex.D-6), which is part of the Court record and was relied upon by the applicant himself, before this Court when he had filed the anticipatory bail in the earlier FIR No.222 of 2019.

The trial Court has recorded a correct concurrent finding of record after appreciating the defence evidence lead by the respondent/accused as even one of the witness Rahul Dev CW-7, it has come that he has also signed the compromise (Ex.D-6) to save the job of the applicant, who is a government servant, therefore, the complainant now by taking a somersault cannot claim that the cheque was not issued by him against an existing debt or liability or the compromise (Ex.D-6), effected between him and the respondent/accused, was not a valid compromise.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

18.02.2022
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No