

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-A-2271-MA-2017(O&M)

Date of Decision:-06.04.2022

Sukhdial.

.....Petitioners.

Versus

Devi Lal.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Rajesh Kapila, Advocate for the Applicant/appellant.

JASJIT SINGH BEDI, J. (ORAL)

The applicant/appellant has filed the present application for leave to appeal against the order of acquittal dated 27.07.2017 passed by Judicial Magistrate, Ist Class, Ferozepur whereby the complaint under Section 138 of the Negotiable Instruments Act, 1881 filed by the applicant/appellant was dismissed.

2. The brief facts of the case are that a complaint was filed against the accused/respondent under Section 138/142 of the Negotiable Instruments Act on the allegations that the accused took an amount of Rs. 15,00,000/ from the complainant and the accused agreed to repay the said amount to the complainant after short period. In order to discharge the above said liability, the accused issued a cheque bearing no. 011229 dated 30.05.2014 for an amount of Rs. 15,00,000/- drawn on HDFC Bank Ltd.

Branch Ferozepur city in favour of the complainant with the assurance that the cheque would be honoured as and when presented for encashment. Thereafter, the complainant, presented the said cheque for encashment through his banker, but the same was dishonoured by the banker of the accused vide memo dated 31.05.2014 with remarks “Funds Insufficient & Drawers Signatures Differs”. The allegations were that the accused intentionally issued the cheque in question inspite of the fact that he had no funds in his bank account and having different signatures. A legal notice dated 07.06.2014 was issued to the accused but the accused failed to pay the cheque amount to the complainant within the statutory period leading to the complaint being filed.

3. The appellant/Complainant produced preliminary evidence and after hearing of the preliminary evidence adduced by him, the accused was ordered to be summoned vide order dated 11.02.2015. The accused appeared in the Court and he was enlarged on bail. The notice of accusation under section 138 of the Negotiable Instruments Act was served upon the accused, to which he pleaded not guilty and claimed trial.

4. The complainant Sukhdial Singh stepped into the witness box as CW1 and vide his affidavit Ex.CW1/A, he reiterated the allegations leveled in the complaint on oath. The complainant also proved on record the original cheque bearing No. 011229 dated 30.05.2014 as Ex.C1, bank memo dated 31.05.2014 as Ex.C2 and Ex. C3, copy of legal notice Ex.C4, Postal receipt Ex.C5, registered envelop Ex. C6, acknowledgment Ex. C7 and bank statement Ex. C8.

5. Thereafter, the statement of the accused under Section 313 Cr.P.C was recorded wherein all the incriminating circumstances appearing

against the accused was put to him but he denied all the allegations. He stated that he was innocent and had been falsely implicated in the present complaint. Actually the complainant Sukhdial Singh was a police informer. He i.e. the accused was posted at CIA Staff Ferozepur from year 2012 to 2014, since he was employed in the Punjab Police Department. The complainant being a Police informer used to visit the CIA Staff also. Being a Police informer, the complainant was having acquaintance with many officials in Punjab Police Department Ferozpeur. The Complainant used to demand money from the department for the information being provided by him. Even he was pressurized by Sukhdial Singh for this purpose but he showed his inability for the same. Thereafter, Sukhdial Singh and one person namely Gurbaksh Singh @ Raju son of Fauja Singh filed applications against him with the allegations that he had obtained money for the recruitment of the sons of Sukhdial Singh and Gurbaksh Singh son of Fauja Singh in the Police Department. Later on Gurbaksh Singh withdrew his application and gave a affidavit that he had filed the application at the instance of Sukhdial Singh. When Sukhdial Singh used to visit the office of SSP Ferozepur in connection with the application given against him, then Sukhdial Singh met some officials of his department who were inimical towards him since he had got lodged an FIR against them and had detected a number of frauds in the office of SSP Ferozepur. In order to resolve the issue of the application filed by Sukhdial Singh against him, he collected a panchayat. Then Pishora Singh son of Mohan Singh, resident of village Lakhmir Ke Uttar was appointed as a mediator. In the panchayat even Piara Singh Ex-Sarpanch of village Jia Bagga and Mehal Singh Sarpanch were also present. At the instance of the panchayat, he gave signed blank cheques

to Pishora Singh son of Mohan Singh so that if any fault on his part was found, then the panchayat would impose any penalty upon him. But the complainant snatched the cheques from Pishora Singh and in this regard Pishora Singh also gave an application to P.S Mamdot. Thereafter, one of the signed cheques snatched from Pishora Singh was misused by the complainant and presented in the bank but as such the inquiry was pending before the police officials, so the complainant presented his other signed cheques available with him before the higher police officials which were in possession of the complainant. He thus stated that he had no dealing with Sukhdial Singh. The complaint was filed on the basis of false facts.

6. The accused opted to lead the evidence. The accused examined HC Mohinder Singh as DW-1, who proved on record, certified copy of application Ex. D-9, certified copy of statement of Gurbaksh Singh as Ex. D-10, certified copy of affidavit dated 17.05.2014 Ex. D-11, certified copy of investigation report dated 25.04.2015 Ex. D-12. HC Charan Singh examined as DW-2, who proved on record certified copy of FIR no. 59 dated 17.06.2010 Ex. D-13, certified copy of FIR no.50 dated 08.05.2011 Ex. D-14. Pishora Singh examined as DW-3, who supported the case of the accused. HC Mukhtiar Singh examined as DW-4, who proved on record Ex. D-9 to Ex D-11. Thereafter, the accused closed his defence evidence.

7. I have heard counsel for the applicant/appellant (complainant) at length.

8. In the present case, the respondent/accused has come up with the plea that the complainant was an informer of the police and used to visit police station. The applicant/appellant (complainant) demanded his commission for the catch made at his instance but the accused/respondent

showed his helplessness on which the complainant made an application dated 09.05.2014 against the accused which is Ex.D-1. The complainant as CW-1 has admitted during his cross examination that the said application was made by him. A perusal of the application Ex.D-1 would reveal that the complainant had been allured by the accused to give a sum of Rs.15 lacs to the accused for the purposes of employment of the two sons of the complainant in the police department. When the accused could not fulfil the assurance the complainant asked for return of the amount on which seven blank cheques were issued. The said cheques were Ex.D-3 to Ex.D-8.

9. The version in the affidavit Ex.CW-1/A on the other hand mentions that the complainant gave a loan to the accused in 2012-2013. Ex.D-1 dated 09.05.2014 mentions that the complainant gave Rs.15 lacs to the accused in three installments in 2012-2013 for the procurement of a job. These versions are contrary to each other. Even otherwise it is highly unlikely that the complainant would give a loan to the accused during the period when transactions for seeking of employment was underway and the complainant had otherwise allegedly paid a sum of money to the accused. A perusal of the record would reveal that the said blank cheques were given in lieu of compromise having taken place about the employment of the son of the complainant in the police department.

10. It may also be relevant to mention here that the complainant has admitted that Pishora Singh from whom the complainant had snatched the cheques had given an application against him in the police station and the compromise was effected on 30.05.2014. Interestingly the date of the cheque is also 30.05.2014 and the ink on the body of the cheque and the signatures differs. Thus, the version of the complainant appears to be

doubtful that the said cheque was issued in the discharge of the liability as suggested in the complaint. In fact it is quite apparent that the said cheque was issued in lieu of a compromise dated 30.05.2014 which is incidentally also the date of the cheque.

11. Leaving aside the issue whether Pishora Singh/ mediator was given cheques by the accused or the complainant allegedly snatched away the same; the contents of the said application Ex. D-1 read in the light of statement made by the complainant himself vide Ex. D-2, the story of the complainant is found to be inconsistent with the story as mentioned by him in the complaint; whereas the plea of the accused seems to be highly probable in the given circumstances that the parties entered into compromise over the employment issue whereby the accused gave Pishora Singh seven blank signed cheques and the cheque in question is one out of them but the complainant snatched them and misused one cheque.

12. A perusal of the aforementioned facts clearly establishes that the respondent-accused has been able to rebut the presumption under Section 139 of Negotiable Instruments Act, 1881 by raising a highly probable defence thereby contesting the existence of a liability or a legal enforceable debt.

13. In view of the above, there is no merit in the application for leave to appeal preferred by the applicant/appellant (complainant) and the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

April 06, 2022
Vinay

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