

274

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1347-2022 (O&M)
Date of Decision: 20.09.2022

SHAKIR

.....Petitioner

Versus

SANJAY SHARMA & ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sumit Kumar, Advocate for
Mr. Baljeet Beniwal, Advocate
for the petitioner.

Mr. Shiv Kumar, Advocate
for the respondent No.1-complainant.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.(Oral)

The prayer in the present petition is for setting aside the impugned judgment dated 23.05.2022 passed by the learned Additional Sessions Judge, Faridabad, whereby the learned Court upheld the judgment dated 30.11.2017 and order of quantum of sentence dated 06.12.2017 passed by the learned Judicial Magistrate, 1st Class, Faridabad.

2. The brief facts of the case are that the complaint was filed by complainant/respondent No.1-Sanjay Sharma, who stated that he had

advanced a friendly loan of Rs.4,00,000/- to the accused/petitioner in 2014 for a period of four months. In discharge of his liability, the accused/petitioner issued a cheque bearing No.205265 dated 24.10.2014 of Rs.2,00,000/- and cheque bearing No.205266 dated 24.10.2014 of Rs.2,00,000/- both drawn on HDFC Bank Ltd., SCO No.139/140, Sector-21-C, Faridabad (hereinafter referred to as the cheques in question) in favour of the complainant. When the complainant presented the said cheques with his banker, the said cheques were dishonoured due to reason “funds insufficient” vide return memo dated 09.12.2014. Thereafter legal notice dated 24.12.2014 through registered post was issued to the accused calling upon him to make the payment. No payment was made by the convict/petitioner. With these submissions, the complaint was filed on 27.01.2015 to summon and prosecute the accused under Section 138 of the Negotiable Instruments Act. After recording of the preliminary evidence, the petitioner/accused came to be summoned vide order dated 27.01.2015.

3. Statement of the convict/petitioner under Section 263(g) Cr.P.C. was recorded on 21.08.2015 in which the convict/petitioner denied his liability in question in favour of the complainant. He stated that he took only Rs.1 lakh from the complainant on interest out of which he had already paid Rs.90,000/- to the complainant. He had given blank signed cheques to the complainant as security.

4. The complainant appeared in the witness box as CW-1 and was allowed to be cross-examined by the convict/petitioner. CW-1 proved the cheques in question as Ex.C1 and Ex.C3, return memos Ex.C2 and Ex.C4, legal notice as Ex.C5, postal receipt Ex.C6,

income tax return for assessment years 2013-14, 2014-15 and 2015-16 as Ex.CB to Ex.CD, affidavit of acknowledgement of loan dated 23.04.2014 Ex.CE and receipt Ex.CF. In defence the convict/petitioner examined Iklakh as DW1 but his affidavit of deposition was discarded being incoherent vide order dated 15.09.2017 by the Trial Court.

5. The learned Judicial Magistrate, 1st Class, Faridabad convicted the convict/petitioner and sentenced vide judgment dated 30.11.2017 as under:-

Sections	Compensation	Simple Imprisonment
143(1) NI Act read with Section 357(1)(3) of Cr.P.C.	Rs.6,00,000/-	06 months

6. Pursuant to the aforementioned conviction, the convict/petitioner preferred an appeal before Court of the learned Additional Sessions Judge, Faridabad which upheld the conviction vide judgment dated 23.05.2022.

7. Aggrieved by the aforementioned judgments, the present revision-petition has been filed.

8. The learned counsel for the convict/petitioner contends that the Courts below have erroneously recorded judgments of conviction. In fact, the complainant did not have requisite funds to advance as a loan to the convict/petitioner. The statement of the complainant recorded as CW-1 was materially discrepant and unbelievable. No independent witness of the transaction was examined to substantiate the claim of the complainant that in fact he had advanced a loan of Rs.4,00,000/- to the petitioner/accused. In fact, the petitioner/accused had taken a loan of Rs.1,00,000/- from respondent No.1-complainant and a sum of

Rs.90,000/- had been repaid. A security cheque lying with respondent

No.1-complainant had been misused by him. He thus, prays that the present revision petition be allowed and he be acquitted of the charges framed against him.

9. On the other hand, the learned counsel for respondent No.1-complainant contends that two cheques were given in lieu of a friendly loan which had been advanced by respondent No.1-complainant to the convict/petitioner and as such there was an enforceable debt and liability on the part of the convict/petitioner. The convict/petitioner had admitted that he had taken Rs.1,00,000/- as a friendly loan out of which he had repaid Rs.90,000/- but no evidence of the defence set up by the convict/petitioner had been provided during the course of the trial. On the contrary, the convict/petitioner had executed an affidavit Ex.CE and receipt Ex.CF, wherein he admitted that he had received a friendly loan of Rs.4,00,000/- and had also given two cheques to respondent No.1-complainant. Therefore, the plea that the cheques in question had been given as security cheques cannot be accepted. He therefore, contends that the convict/petitioner has not been able to rebut the presumptions under the provisions of the Negotiable Instruments Act.

10. I have heard the learned counsel for the parties at length.

11. In the present case, two documents Ex.CE and CF have been executed which are the affidavit and receipt respectively. As per the said documents, the convict/petitioner admitted that he had received a friendly loan of Rs.4,00,000/- and had also given two cheques to respondent No.1-complainant. Therefore apparently, there was a subsisting debt and liability which is enforceable in law. The defence of the convict/petitioner that he had borrowed a sum of Rs.1,00,000/- and

returned a sum of Rs.90,000/- is not borne out from anything brought on

record by the convict/petitioner. On the contrary, he is completely unable to explain as to why two blank signed cheques issued as a security. Therefore, respondent No.1-complainant has duly approved that there was an enforceable liability towards him and in order to discharge the liability, the convict/petitioner firstly issued two cheques on which he has admitted his signatures and thereafter issued an affidavit and a receipt. Once the signatures on the cheques have been admitted, the presumption envisaged under Section 118 of the Negotiable Instruments Act arises that the cheque had been issued for the discharge of a liability. The burden thereafter shifts on the accused to prove his innocence and rebut the presumption under Section 139 of the Negotiable Instruments Act. The convict/petitioner has failed to bring on record any credible evidence to rebut the allegations of respondent No.1-complainant.

12. In view of the above, this Court sees no reason to interfere with the well reasoned judgments of the Trial Court and the Lower Appellate Court. Therefore, the present revision petition is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

20.09.2022
JITESH

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