IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

317

CRA-AS-147-2022(O&M)
Date of decision: 21.07.2022

PAMOD @ PARMOD KUMAR

....Appellant(s)

Versus

GEETA DEVI

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present : Mr. Subhash Godara, Advocate
for the appellant.

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VINOD S. BHARDWAJ. J. (ORAL)

The present appeal has been filed against the judgement dated 21.02.2019 passed by Sub Divisional Judicial Magistrate, Siwani in Criminal Case No.200-II of 2017 titled as 'Pamod Kumar Vs Smt. Geeta Devi' whereby the respondent-accused has been acquitted of the charges levelled against her.

2. The brief facts of the case are that the appellant-complainant and respondent-accused are stated to have shared cordial and friendly relations and therefore, the respondent-accused borrowed a sum of Rs. 6,00,000/- from the appellant-complainant and respondent-accused, in discharge of her legal liability, issued a cheque No. 556532 dated 12.07.2017 for an amount of Rs. 6,00,000/- in favour of the appellant-complainant from her bank account No. 30210204809 drawn on SBI, Hisar. The cheque was presented to drawee bank but same was returned unpaid with remarks 'Account Closed' vide memo dated 14.07.2017. Thereafter, a notice was served upon the respondent-accused on 01.08.2017 but the respondent-accused had not paid the amount of the cheque. The complaint under Section 138 of the Negotiable Instruments Act, 1881 was thus instituted.

3. After preliminary evidence of the complainant, the respondent-accused was summoned to face trial vide order dated 14.08.2017. Respondent-

accused appeared before the court and applied for bail. He was admitted to bail vide order dated 07.02.2018 and he was served with a notice of accusation under Section 138 of the Negotiable Instrument Act, 1881 vide order dated 12.03.2018 to which, he pleaded not guilty and claimed trial.

After the notice of accusation, the complainant examined himself as CW-1 and Smt. Sharda as CW-2. The appellant-complainant has also tendered original cheque bearing No. 556532 dated 12.07.2017 as Ex.P1, return memo dated 14.07.2017 as Ex.P2, copy of legal notice dated 01.08.2017 as Ex.P3, postal receipt as Ex.P4, copy of Bank account statement of complainant as Ex.PX.5. Thereafter, the evidence of appellant-complainant was closed by complainant vide his separate statement dated 06.08.2018.

Statement of respondent-accused under section 313 of the Code of Criminal Procedure was recorded wherein he stated that he has been falsely implicated in the present matter.

In defence evidence, the respondent-accused examined Vinod Kumar Senior Associate, SBI, Azad Nagar as DW-1 and tendered the following document:-

Ex. D1/A:- Copy of Bank Account statement of accused

Ex. D1/B:- Copy of relevant extract of register in which application for stop payment has been entered.

Ex. D1/C:- Copy of application for stopping payment.

Ex. D2:- Copy of application dated 20.05.2017 moved to SHO, Police Station, Balsamand

Ex. D3:- Affidavit furnished by Bir Singh son of Nihal Singh

Ex. D4:- Affidavit furnished by Bir Singh son of Ran Singh

Ex. D5:- Affidavit furnished by Mangat Ram son of Fateh Singh

Ex. D6:- Affidavit furnished by Raju son of Om Parkash

Thereafter, learned defence counsel closed the evidence, vide his separate statement dated 20.02.2019.

4. Upon consideration of the entire evidence, the Sub Divisional Judicial Magistrate, Siwani came to the following conclusion:-

> *12. In the present complaint, according to the complainant, he had advanced a loan of Rs. 6,00,000/- to the accused on friendly terms as she was in need of money. However, the complainant has failed to mention the time and date of the advancement of alleged loan to the accused. It is also strange that the complainant had advanced the loan of such a huge amount of Rs. 6,00,000/- to the accused without any written agreement or in the absence of any independent witness. He has also failed to disclose the purpose for which the accused had allegedly taken the loan from end. According to the case of the complainant, he had withdrawn a sum of Rs. 4,00,000/- and 5,00,000/- from his bank account on 20.11.2014 & 25.11.2014 respectively and had paid an amount of Rs. 6,00,000/- out of the cash above mentioned to the accused. However, there is no evidence that the above-mentioned cash which was withdrawn by the complainant from 20.11.2014 and 25.11.2014 was for the purpose of lending money to the accused. CW-2 Smt. Sharda is real aunt of the complainant and the accused had been her tenant for 2-3 years. She appears to be an interested witness. In addition to this, it is also pertinent to mention here that the accused has examined Vinod Kumar, Senior Associate, SBI, Azad Nagar, Hisar as DW-1 who has proved that the accused had moved an application (Ex. D1/C) to the Bank for stopping payment of various cheques including cheque Nos.*

> *556529 to 556533 and this application has been moved on 20.05.2017 whereas the disputed cheque is of 12.07.2017. The complainant had moved an application before the SHO, Police Station, Balsamand on 20.05.2017 mentioning that her purse/hang bag containing the cheque Nos. 556529 to 556533 had been stolen. Although, no witness from the police station has been examined by the accused but the complainant himself has failed to prove his case. Hence, keeping in view the above discussion, the accused is hereby acquitted of the charge levelled against her. Her bail bonds and surety bonds stand discharged.*

5. Learned counsel for the appellant has contended that the appellant had duly examined Smt. Sharda, who was the landlady of the respondent-accused Geeta and that the payment in question had been given to the respondent-accused on the asking of the said Smt. Sharda. He further submits that in view of the fact that the cheque had been duly issued in favour of the appellant, there is a presumption attached regarding existence of a legally enforceable debt and that the appellant would be assumed to be the holder of the cheque in due course. The cheque in question being dishonored, the proceedings were rightly lodged and no satisfactory explanation has been tendered by the respondent-accused as to how and under what circumstances the cheque in question was issued by her.

6. I have heard learned counsel for the appellant and have gone through the material on record.

7. It has come forth in the evidence of the appellant that the witness whose presence is cited and relied upon by the appellant i.e. CW-Smt. Sharda, is the aunt of the appellant-complainant and besides has no other evidence has been led by the appellant to prove that he had advanced the sum of Rs.6 lakhs to the respondent-accused as is being claimed. It would not seem prudent for any person

to advance such a huge amount without execution of proper documents in support thereof. Furthermore, respondent-accused has made a specific reference that she had moved an application to the SHO Police Station Balsamand on 20.05.2017 relating to her handbag/purse being stolen which also contained cheque-book that had been taken along with it. The respondent thus not only denied the existence of any liability, she also denied having issued the cheque as well. The burden thus lay upon the complainant to establish the factum of the amount having been advanced as well as that the cheque in question had been issued in lieu thereof. No doubt there is a presumption in favour of the holder of the cheque once the same is presented, however, such presumption is a rebuttable presumption. It is not incumbent upon an accused to step into the witness box to prove his/her defence. Once a reasonable ground/objection is taken regarding the non-existence of liability and/or issuance of cheque in discharge of the legally enforceable debt, the burden falls upon the complainant to establish pre-requisite for attracting the offence under Section 138 of the Negotiable Instruments Act, 1881. Reference in this regard can be drawn to the judgement of the Hon'ble Supreme Court in the matter of ***Triyambak S. Hegde Vs. Sripad reported as (2022) 1 SCC 742.*** Hence, mere absence of the complainant to step into the witness box cannot be a ground itself to draw an inference against the accused. There can be no negative burden cast upon an accused to prove that he had not carried out the offence. Such burden is always to be discharged by the complainant or prosecution.

8. It is also evident that all the circumstances have been well considered by the Sub Divisional Judicial Magistrate, Siwani while passing the impugned judgement. Learned counsel has not been able to refer to any evidence that would lead to the conclusion that the order passed by the Sub Divisional Judicial

Magistrate, Siwani suffers from any illegality, perversity, mis-appreciation or non appreciation of the relevant evidence that would have rendered the finding to be perverse.

9. In the absence of any such circumstances or appreciation of evidence by the Court, the conclusions so drawn by the trial Court would not ordinarily be interfered with by the Appellate Court even if any other view is a probable view.

10. In view of the above, finding no illegality, perversity or impropriety in the judgement dated 21.02.2019 passed by the Sub Divisional Judicial Magistrate, Siwani in Criminal Case No.200-II of 2017, the present appeal is dismissed and the judgement of the Court below is affirmed.

(VINOD S. BHARDWAJ)
JUDGE

July 21, 2022
S.Sharma(syr)

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