

234 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-AS-31-2019
Date of Reserve:-09.10.2023
Date of Decision: 28.11.2023

Mohammad Shamim

...Appellant

vs.

M/s Bala Sundri Textiles & Anr.

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Rajesh Bansal, Advocate
 for the appellant.

 Mr. Puneet Kakkar, Advocate
 for the respondents.

N.S.Shekhawat J.

1. The present appeal is directed against the impugned judgment dated 17.05.2016, passed by the Court of Judicial Magistrate Ist Class, Panipat, whereby the respondents/accused were ordered to be acquitted of the notice of accusation under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "Act").

2. As per the case of the appellant/complainant the respondent No.2 was the proprietor/authorised signatory of respondent No.1 and was also in-charge and responsible for day to day conducts and affairs of the business of respondent No.1. As per him, the respondent No.2 was having friendly relations with the appellant. In the month of December 2011, the respondent No.2 approached the appellant and requested him to give some financial help and on

30.12.2011, the appellant gave a sum of Rs.4,75,000 to respondent No.2, who assured to return the same within a period of 3/4 months. In the month of April 2013, the appellant met respondent No.2 and demanded back his aforesaid amount of Rs.4,75,000/- along with interest and in discharge of his legal liability, the respondent No.2 had issued a cheque bearing No.004857 dated 10.04.2013, amounting to Rs.1,35,000/- to the present appellant. However, on presentation, the cheque was dishonoured by the banker of the appellant, vide the memo dated 30.04.2013 with the remarks “ Insufficient Funds”. Thereafter, the appellant got a legal notice dated 25.05.2013, served upon the respondents through registered AD, calling upon them to make the payment of cheque in question. However, when the payment was not made by the respondent, the appellant was left with no other option, but to file the present complaint before the Trial Court.

3. Learned counsel for the appellant vehemently argued that the appellant had successfully proved his case by examining himself as CW-1 and his testimony was duly supported by CW-2, Ravi Kumar. In fact, the appellant and respondent No.2 were having friendly relations and the appellant had provided the financial help to the respondent No.2. Even the amount was handed over to respondent No.2 by withdrawing the same from the bank and sufficient evidence was led in this regard. However, the trial Court completely ignored the evidence and the statutory presumption under Section 139 of the Act.

4. On the other hand, learned counsel for the respondents submitted that the complaint was filed on the basis of an imaginary story. In fact, in the month of April 2013, the appellant had agreed to sell his godown, which is

located near the house of the respondent No.2 for a consideration of Rs.13,50,000/- and the accused had issued the present cheque of Rs.1,35,000/- only as 10% of the total sale consideration, as earnest money of the said agreement. However, the appellant failed to get the agreement executed and did not return the cheque to the respondent No.2. Rather he presented the said cheque illegally and the same was dishonoured.

5. I have heard the learned counsel for the parties and perused the record carefully.

6. In support of the case of the appellant, the appellant examined himself as CW-1 and reiterated the averments made in the complaint. He stated that he had handed over the money in the presence of Ravi and Ali. Even he had cheque book of bank, which was received later on, however, he did not know when the same was received. Even Ravi and Ali were present at the time, when the cheque was handed over to him by the accused. The appellant examined Ravi Kumar as CW-2, however, Ravi Kumar stated that he had no knowledge with regard to this case and he had been brought by the appellant/complainant to depose before the Court. Even he did not support the averments made in his own affidavit Ex.CW-2/A and he stated that no financial transaction had taken place in his presence. Apart from that, the appellant had stated that he had withdrawn the amount from Punjab National Bank and respondent No.2 had also accompanied him to the bank and respondent No.2 himself had filled up the withdrawal form. However, no evidence could be led by the appellant in this regard. Only a bank statement mark "CA" had been placed on record, which was not proved as per law. Even as per mark "CA," it has nowhere been mentioned that the respondent No.2 had withdrawn the said

amount from the account of the appellant. Even, there was no evidence to show that the huge amount of Rs.4,50,000/- was handed over by the appellant to respondent No.2.

7. This Court agrees with the findings recorded by the Trial Court that to fasten the liability upon the respondents for committing the offence punishable under Sections 138 of the “Act” and to raise a presumption under Section 139 of the Act, it was incumbent upon the appellant to prove the existence of legally recoverable debt and to discharge the initial burden in this regard. Even no document had been filed by the appellant to show any financial transaction between the parties. Rather the testimony of CW-2, Ravi Kumar had demolished the case of the appellant. He clearly stated that there was no exchange of money in his presence. Even the second witness Ali was not examined by the appellant, to prove his case. Further, the appellant stated that the amount was withdrawn from the bank account, however, the said entry again could not be proved in accordance with law.

8. Even otherwise, I have gone through the judgment passed by the Trial Court and finds that there is no material irregularity, illegality or perversity in the impugned judgment passed by the Trial Court. Accordingly, the present appeal is ordered to be dismissed, being devoid of merits.

(N.S.SHEKHAWAT)
JUDGE

28.11.2023
hitesh

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