IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

201 **CRA S-575-SBA-2007**
Date of Decision : 25.05.2023

Kulwant Singh ...Appellant

Vs.

Nathu Ram …Respondent

CORAM: HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present:- Mr. Gaurav Singla, Advocate as
Amicus Curiae for the appellant.

Mr. B.D.Sharma, Advocate
for the respondent.

N.S.SHEKHAWAT, J

1. The present appeal is directed against the judgment dated 02.01.2006 passed by the learned Judicial Magistrate 1st Class, Jallandhar, whereby, the respondent was ordered to be acquitted of the notice of accusation under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as **'the Act'**)

2. The appellant/complainant has filed the present appeal under Section 138 of the Act against respondent/accused by alleging that the respondent had approached him for a loan of Rs. 1,30,000/- and assured the appellant that he would return the entire amount within a period of six months. After a lapse of six months, the appellant approached the respondent for returning the amount. However, in-stead of returning the amount in cash, the respondent issued a cheque bearing No. 883068 dated 22.07.2000 for a sum of

Rs. 1,30,000/- drawn on Syndicate Bank from his account. The appellant presented the cheque with his banker for encashment and the same was returned unpaid vide memo dated 17.01.2001 with the remarks " Payment Stopped by the Drawer". At the time of issuing the cheque, the respondent had assured the appellant that cheque would be honoured on presentation and had also put his signatures on the same. The appellant issued a legal notice to the respondent on 24.01.2001 under registered AD as well as UPC, requiring him to pay the amount equally to the dishonoured cheque. However, in spite of receipt of legal notice, the respondent did not make the payment of the amount of cheque in question within the stipulated period and consequently, the complaint was filed on 20.02.2001 in the Court of learned Additional Chief Judicial Magistrate, Jallandhar.

3. I have heard learned counsel for the parties and perused the trial Court record with their able assistance.

4. The learned counsel for the appellant vehemently argued that the respondent had taken a loan of Rs. 1,30,000/- from the appellant. He also issued a cheque in discharge of his legal liability, however, on presentation, the same was returned unpaid vide memo dated 17.01.2001 with the remarks "Payment Stopped by the Drawer". The legal notice dated 24.01.2001 was sent to the respondent, however, the respondent failed to pay the amount within the statutory period of 15 days from the date of receipt of the notice

and had thus committed offence under Section 138 of the Act. Even the learned trial Court found that the appellant had completed all the statutory formalities, as prescribed by the Act. However, the learned trial Court committed grave error in observing that there was material alteration in the cheque in question and wrongly acquitted the respondent. The learned counsel further contends that, in words, the amount was properly mentioned and it can never be inferred that there was a material alteration in the cheque in question. The submissions made by the learned counsel for the appellant have been countered by the learned counsel appearing on behalf of respondent/accused by submitting that the appellant had inserted figure "1" before the other figures, i.e., 30000/- in the cheque in question and the amount was altered to be rupees "130000/-". Even, a reply was sent by the respondent in this regard, which has been exhibited as Ex.C-6 and the appellant could not lead any evidence to rebut the said stand. The learned counsel for the respondent also referred to paragraph 2 of the reply to the legal notice dated 23/24.01.2001 and the same has been reproduced below:-

> ***Paragraph 2.***
>
> *That your client is only a petty shop-keeper and has no sufficient means and capacity to lend the alleged amount and the alleged cheque were not issued to discharge any legal and enforceable debt or liability. Same were handed over to your client as Trustee, who has not only committed criminal breach of trust by presenting the cheques in the*

> *bank for encashment but has also committed forgery by forging both the cheques. In cheque 883068, your client in connivance with Lakhjeet Kaur, put "1" before "30,000/-" and converted the same for a cheque for Rs. 1,30,000/- and also wrote this amount in words also. Similarly in other blank cheque, your client filled in the amount of Rs. 30,000.00 in words and figures. Your client in connivance with said Smt. Lakhjit Kaur has cheated and deceived my client with dishonest intention while creating a false liability by committing forgery".*

5. After hearing the respective contentions made by learned counsel on both the sides, I find that the submissions made by the learned counsel for the appellant do not carry any weight and are liable to be rejected by this Court. In M L Tannan's Banking Law and Practice in India, Twenty-eighth Edition, 2021, he has defined "Material Alterations" at page 590 as mentioned below:-

> *"An alternation is material, which in any way alters materially or substantially the operation of the instrument and the liabilities of the parties thereto, irrespective of the fact whether or not the change is prejudicial to the payee".*

6. Apart from stating that a banker must be very careful when there is material alteration in the cheque presented for payment, and that it should see that such alternation has been made with the drawer's consent or authority and is confirmed by his signatures. Tannan has also given few examples of material alternations in which

alteration of date of instrument with the purpose of accelerating or postponing the time of the payment comes on the top.

7. Apart from that, Section 87 of the Act also speaks about the effect of material alteration and the same has been reproduced below:-

> *“**87. Effect of material alteration**.—Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties; Alteration by indorsee. —And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof. The provisions of this section are subject to those of sections 20, 49, 86 and 125”.*

8. It clearly suggests that any material alteration of an negotiable instrument renders the same void as against any one who is party thereto at the time of making such alternation and does not consent thereto unless it was made in order to carry out the common intention of the original parties.

9. In the present case, it is apparent that there is nothing on record that the alteration in the amount of cheque Ex.C1 was made in order to carry out common intention of the original parties. Therefore, by virtue of the material alteration being made to the amount of

cheque without any authentication thereto by the drawer of the cheque, the instrument has become void. However, the banker, even there being a material alteration in the cheque, did not proceed to mention the same as one of the many reasons for returning the cheque, but only stated that the cheque was returned for the reason "Payment Stopped by the Drawer". Consequently, the trial Court has correctly held that the appellant/complainant has not uttered even a single word in his deposition that the word "1" had not been added subsequently to the writing of the other figures as alleged by the accused; rather, from the perusal of his deposition it is made out that the appellant half-heartedly admitted that the figure "1" had been added subsequently in the cheque Ex.C1, as he had shown his signatures about this fact by deposing in his examination to the effect that he did not know as to figure "1" was there before other figures, i.e. "30,000/-" or not. He further stated in his cross-examination that he did not know as to who had written the figure "1" in the cheque in question. Moreover, the complainant did not say that the correction was effected with the knowledge or consent of the drawer. Thus, the learned trial Court has correctly recorded the finding that the correction was made without the knowledge and consent of the drawer of the cheque and this amounts to material alteration in the cheque Ex.C1.

10. Even the scope of interference in an appeal against acquittal is very limited. Unless it is found that the view taken by the Court is impossible or perverse, it is not permissible to interfere with the finding of acquittal. Equally if two views are possible, it is not permissible to set aside an order of acquittal, merely because the Appellate Court finds the way of conviction to be more probable. The interference would be warranted only if the view taken is not possible at all.

11. In view of the above discussion, this Court finds that the impugned judgement dated 02.01.2006 passed by the Judicial Magistrate 1st Class, Jalandhar, does not suffer from any material irregularity or perversity and is liable to be upheld by this Court and the appeal is, accordingly, dismissed being devoid of merits.

12. All pending applications, if any, are disposed off, accordingly.

13. Records of the Court below be sent back.

14. In the end, I record my appreciation for Mr. Gaurav Singla, learned Amicus Curiae, who had rendered able assistance to this Court.

25.05.2023 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No