

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

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**CRA-S-2904-SB-2010
Decided on : 18.01.2023**

M/s Hari Chand Sant Dass

. . . Appellant(s)

Versus

Manpreet Singh

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ramneek Vasudeva, Advocate
for the appellant(s).

Mr. Mukand Gupta, Advocate
for the respondent(s).

SANJAY VASHISTH, J.

1. This is an appeal filed by the complainant against the judgment dated 23.01.2009, passed by the Court of Ld. Judicial Magistrate Ist Class, Ropar (for brevity 'Ld. Trial Court'), in a complaint case bearing No. RT-152/1.3.07/6.11.2008, filed under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act'), whereby, respondent (accused) was acquitted.

2. In the complaint case filed before Ld. Trial Court, it was alleged that accused had purchased diesel from appellant in the month of 2006, for a sum of Rs.25,000/-, and in discharge of his liability, a cheque bearing No.789210, dated 13.01.2007, drawn on ICICI Bank Ltd., Ropar, in favour of the complainant (appellant herein) was issued. On presentation of said cheque in the Bank, same was received back dishonoured vide memo dated 13.01.2007, with remarks "insufficient funds".

After covering all the legal steps, a complaint bearing No. RT-152/01.03.07/06.11.2008, under Section 138 of NI Act, was instituted by the

complainant.

3. After recording the preliminary evidence, accused (respondent herein), vide order dated 01.03.2007, was summoned to face trial under Section 138 of NI Act. After appearance, notice of accusation was also served vide order dated 03.05.2008, to which accused pleaded not guilty, and claimed trial.

4. Considering the material i.e. documentary and the oral evidence, Ld. Trial Court, reached the conclusion that accused has successfully rebutted the presumption under Section 139 of NI Act, and therefore, cannot be fastened with the liability in the absence of existence of debt/liability on the date of issuance of cheque. Hence, accused was acquitted by dismissing the complaint.

5. During the course of hearing, counsel for the appellant referred to the document i.e. Bank Account Statement for the period 01.03.2007 to 31.03.2007, which has been annexed first time with the present memo of appeal as Annexure A-1. Although, counsel failed to establish the relevancy of said document, yet there is no answer that as to why this Court must examine any such document, which was never the part of the record before the Ld. Trial Court.

6. Similarly, counsel for the appellant tried to refer to the another document, attached with the memo of appeal as Annexure A-2, i.e. copy of ledger of Manpreet Singh (accused-respondent herein) for the period of 26.05.2006 to 06.03.2007, and argues that as per said document an amount of Rs.43,151/- was payable on 06.03.2007 by the accused to the firm of the complainant i.e. M/s Hari Chand Sant Dass.

Again counsel has failed to give any reason as to why this Court

should pay any attention to the ledger entries of the complainant-firm, when same was not a part of record before the Ld. Trial Court. Thus, both the aforesaid referred documents are not required to be examined by this Court in appeal against acquittal. Otherwise also, both the documents are the proved documents in the form of admissible evidence.

7. Counsel for the appellant also argued that judgment of acquittal was passed in a routine manner, and has not paid any attention to the fact that cheque return memo dated 13.01.2017, which is available on record as Ex.P2, clearly shows that the cheque bounced because of ‘insufficiency of funds’.

In this regard, counsel for the respondent pointed out to the finding given by Ld. Trial Court in its judgment dated 23.01.2009, and thus, argues that no one from the Bank is called to prove the factum of presentation of cheque, and dishonouring of the same due to ‘**insufficiency of funds**’.

8. After hearing counsel for both the sides, and perusing the relevant material available on record, I am also of the view that Ld. Trial Court has rightly held that without there being any testimony of the Bank official/clerk, the cheque returning memo cannot be said to have been proved in accordance with law. Rather, it is observed that complainant failed to prove that he ever presented the cheque for its encashment, as it got dishonored due to ‘insufficiency of funds’. Thus, without producing the Bank officials/clerk for proving of returning of memo, the alleged substance in the complaint against the respondent remains unproved

9. Further, counsel for the appellant refers to the stand taken by the accused that while recording his statement under Section 313 Cr.P.C.,

wherein, he pleaded that an undated cheque for an amount of Rs.25,000./- as a security was handed-over to the complainant, which was misused by him, as a sequel to some dispute, arising on account of settlement of dues of octroi levied on diesel, and submits that it is a case of admission of giving of cheque and signing of cheque. Thus, accused cannot come out of the law of presumption under Section 139 of NI Act.

10. In response to this, counsel for the respondent argues that as per allegations of the complainant, liability to pay the amount pertained to the month of November 2006, but, there is no evidence to that effect. Secondly, respondent's counsel submitted that there is a visible difference in the colour of ink used for scribing the date on the cheque in question, and said finding is recorded by Ld. Trial Court also.

11. In this regard, Ld. Trial Court placed reliance upon **M/s Chahal Engineering & Construction Ltd. Vs. Verma Plywood Company,** 1994(2) Civil Court Cases 246 (P&H). For satisfying the conditions to make out the offence under Section 138 of NI Act, relevant observation recorded by Ld. Trial Court in its judgment at paragraph No.9, 10, 11 &12, is also being reiterated herein-below:

“xx xxx xx xxx

The entire edifice of the complainant's case is founded upon the allegation that the accused issued a cheque for a sum of Rs.25,000/- on 13.01.2007 to discharge his legal liability towards the diesel purchased by him in the month of November, 2006, from the Petrol Pump of the complainant. Vide Ex. P6, the complainant in support of his case, has placed on file copies of seven bills pertaining to 21.7.2006, 24.07.2006, 31.07.2006, 11.08.2006, 12.08.2006, 27.08.2006

and 21.09.2006. None of these bills pertains to the month of November, 2006 i.e. the period qua which the cheque has allegedly been issued. Even the complainant has admitted in his cross examination that the bills produced on record as a part of his evidence only relate to the months of July, August and September, 2006. So it remains unexplained as to why the bills for the month of November, 2006 have not been adduced in evidence especially when the grievance of the complainant is that the cheque in question was issued to discharge liability arising out of the transaction effected in November, 2006. No plausible explanation has been put forth by the complainant or his counsel to justify his shortcoming. In the absence of any bill for the month of November, 2006, the existence of a subsisting debt/liability on 13.01.2007 (i.e. the date of issuance of cheque) stands questioned.

10. *If for the sake of arguments, the bills adduced on record (Ex.P6) are taken into consideration, then it comes to light that the total amount of these bills comes out to be Rs.103148/-. The complainant has himself admitted in his cross-examination that his firm has received Rs. 1, 08,000/- against the said outstanding amount from the accused and he has further admitted that the accused has made an advance payment of about Rs. 4,852 / - to the complainant's firm. This clearly spells out that on the date of issuance of the cheque there was infact no existing debt or liability on the shoulders of the accused. This further makes it highly probable that the cheque in question was issued merely as a security and was rather used for ulterior purposes by the complainant after*

cropping up of some rift between the parties on account of settlement of dues of octroi duties.

11. *It is further pertinent to note that there is a visible difference in the colour of ink used for scribing the date on the cheque in question. This difference is clearly discernible by a naked eye. This suggests that the cheque was undated at the time when it was issued which further makes it highly probable that the cheque was issued as a security to be used as and when a liability arises. There was no debt or liability when the cheque was handed over to the drawee. Dishonour of undated cheque handed over as security for the purpose of a contract does not attract any criminal liability under Section 138 of the Act (reliance placed upon M/s Balaji Seafoods Exports (India) Ltd. Versus Mac Industries Ltd. 1999 (2) Civil Court Cases 109 Madras).*
12. *Further the complainant has failed to get examined the official/clerk of the concerned Bank to prove the factum of presentment of cheque and dishonouring of the same due to insufficiency of funds, due to reasons best known to him. In the absence of the testimony of the Bank official/clerk, the cheque returning memo cannot be said to have been proved in accordance of law.”*

12. To counter the reasoning and findings recorded by Ld. Trial Court, nothing substantial has either been pointed out or addressed by counsel for the appellant to convince this Court, to reach to the conclusion that the reasons given in the judgment of acquittal are worth to hold wrong/perverse or unsustainable in any manner.

During the course of hearing, counsel for the appellant did not refer any documentary or oral evidence from the record of Ld. Trial Court.

13. Therefore, in view of the submissions recorded herein-above, and valid reasons recorded by Ld. Trial Court at first instance, I do not find any substantial ground to interfere with the findings of acquittal recorded by Ld. Trial Court. Hence, the same is maintained and **appeal stands dismissed.**

(SANJAY VASHISTH)
JUDGE

January 18, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*