IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRA-S-3323-SB-2011 (O&M)
Decided on : 06.02.2023

M/s Bhagwant Singh Kohli and Company . . . Petitioner(s)

Versus

Santosh Sharma

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. H.S. Tuli, Advocate for
Mr. S. S. Rangi, Advocate for the appellants.

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SANJAY VASHISTH, J. (Oral)

Present appeal has been filed by the complainant-M/s Bhagwant Singh Kohli and Company, against judgment dated 29.01.2008 passed by learned Judicial Magistrate Ist Class, Patiala, in complaint No. 205-T of 2007/ 1.7.1998, vide which respondent (accused), was acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act.

It is alleged in the complaint that respondent borrowed an amount of Rs. 21700/- in cash from the appellant and to return the said amount, a cheque bearing No. 495722 dated 22.02.1998 drawn at State Bank of Patiala was issued by the respondent in favour of the complainant. For encashment, complainant presented the said cheque before the bank twice but the same was returned due to insufficient funds and resultantly got bounced.

After completing all the steps required under the law, complaint was instituted in the Court by the appellant against respondent. Learned Trial Court in its judgment of acquittal dated 29.01.2008 has given a specific findings that appellant failed to prove the requirements under the law i.e respondent issued a cheque for discharging in all or in part of any debt or other liability.

In regard to this, findings has been given in paragraph No. 17 of the judgment which says as under:

> "*17. The complainant Harminder Singh stepped into the witness box as Pw-1 and nowhere deposed regarding the fact as to how the liability is there against the accused for an amount of Rs 21,700/- The complainant is not an individual identity but is affirm. During his cross-*

examination, Harminder Singh has stated that the complainant form does not deal with the finance business. Hence, it is not the business of the complainant firm to advance money to other persons. The complainant Harminder Singh further deposed that he is having no written document of any kind regarding the fact that an amount of Rs 21,700/- was given in cash to Santosh Sharma- accused. It is very strange that an amount of Rs.21,700/- is being paid to the accused out of the funds of the complainant firm, but there is no entry made in any of the record of the firm. He has further deposed that the accounts of the complainant company are audited by the Chartered Accountant and any cash given to any person is shown in the account books and the same is also audited. This witness further deposed that no audit account regarding the loan of Rs 21,700/- alleged to have been given to the accused is there. It is not the case of the complainant that the account books are not maintained. The case of the complainant is that the account books are maintained but no entry is there regarding advancement of loan of Rs.21,700/- to the accused. No person has been examined as a witness before whom the alleged loan was paid These depositions made by the witness Harminder Singh make it quite clear that the accused was having no liability towards the complainant firm. In case any such liability would have been there, the same might have been reflected in the account books of the complainant firm. The presumption raised under Section 139 of the Negotiable Instruments Act accordingly stands rebutted from the evidence produced by the complainant himself. The mere fact that the complainant is having a cheque signed by the accused, does not mean that the accused is having a liability towards the complainant. It was for the complainant to show that there is some liability of accused towards the complainant form but this is not proved. On the other hand, the evidence produced by the complainant *itself shows that the presumption under Section 139 of the Negotiable Instruments Act has been rebutted by the accused. Hence, the cheque Ex. C1 is not issued in discharge of any legally enforceable debt or liability."*

Counsel for the appellant has failed again by referring any piece of evidence from the record that respondent ever borrowed the said amount of Rs. 21,700/- from the appellant and was thus, cheque in question was issued in discharge of the liability, which is legally enforceable.

For kind reference, Section 138 of NI Act is reproduced here below:

Section 138 in The Negotiable Instruments Act, 1881

"[18] [138 Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [19] [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—
(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [20] [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.
Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]"

Learned counsel for the applicant submits that since signatures over the cheque is not disputed, law of presumption under Section 139 of NI Act would operate against the respondents and thus, he can not run away from his liability.

To the view point of this Court, said submission is not sustainable because the question of presumption would arise only after proving of the fact that respondent/accused was under obligation to pay back the amount which was borrowed by him at a number of times.

Firstly, complainant has to prove his averments taken in the complaint and thereafter, presumption would start operating.

Otherwise also, cheque in question was issued in favour of M/s Bhagwant Singh Kohli and not in favour of Harminder Singh Kohli. In order to show his competence, complainant Harminder Singh Kohli was required to produce on file the partnership deed or some other documents to show that he has the authority to institute the present complaint against the respondent.

Thus, even filing of the complaint, without there being any authorization on behalf of the Firm/Company, would not be maintainable.

I have considered the submission addressed by the counsel for the appellant and the reasons recorded by the trial Court while acquitting the respondent, I do not find any illegality, perversity in the same. Counsel for the appellant has also failed to point out any specific evidence from the lower Court record, to show that findings given by the trial Court are wrong. Judgment passed by Hon'ble Supreme Court in case '*K. Bhaskaran v. Sankaran Vaidhyan Balan', Criminal Appeal No. 1015 of 1999,* cited by the appellant is not applicable to the facts alleged by the appellant in his complaint.

Accordingly, present appeal stands dismissed.

(SANJAY VASHISTH)
JUDGE

06.02.2023
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No