IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-384-SB-2013
Date of Decision: February 06, 2023

Jagan Nath **... Appellant**

Versus

Smt. Amarjeet Kaur and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ashish Gupta, Advocate for the appellant.

None for respondent No.1.

Mr. Parveen Kumar Aggarwal, DAG, Haryana for respondent No.2.

DEEPAK GUPTA, J. (Oral)

Complainant of the case is in this appeal against the acquittal of the accused-respondent by learned Sessions Judge, Fatehabad, in a case under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred as 'the N.I. Act').

2. According to complainant, he and his brothers were owner of 'Ruldu Ram Rice and Cotton Mills, Tohana', which they had leased out to the accused for a period of two years w.e.f. 30.08.2001 to 31.08.2003 @ ₹70,000/- per annum. Rice Mill in the said premises was run by the accused in the name and style of 'A.K. Rice and General Mill'. Complainant had paid electricity bill for an amount of ₹66,758/- of the mill of the accused on 29.08.2003 and in order to repay the said amount, accused issued a cheque No.656178 dated 15.09.2003 in favour of the complainant. On presentation, the cheque was dishonoured with remarks "funds insufficient". Legal notice dated 13.10.2003 through registered post was sent to the accused but the same was received back undelivered with the remarks that addressee i.e. accused had refused to

receive the same. Accused failed to make payment of the cheque amount within the stipulated period, necessitating the complainant to file the complaint bearing No.649/2003 on 27.11.2003.

3. Accused was summoned. Evidence of the parties was taken on record. Matter was heard by learned Judicial Magistrate 1st Class, Tohana, who vide judgment dated 07.11.2008 recorded the conviction of the accused under Section 138 of the N.I. Act. Vide separate order dated 08.11.2008, the accused was sentenced to undergo simple imprisonment for a period of one year and to also to pay a fine of ₹1,33,516/- i.e. double the cheque amount, which on payment was to be handed over to the complainant as compensation. In case of default in payment of compensation, the accused was further asked to undergo simple imprisonment for a period of four months.

4. Against the aforesaid judgment of conviction and order of sentence, accused filed criminal appeal bearing No.14-RBT of 2008, which has been accepted by learned Sessions Judge, Fatehabad and vide judgment dated 11.12.2009. The accused was acquitted by setting aside the judgment of conviction and order of sentence passed by the Court below.

5. Assailing the aforesaid judgment of acquittal as recorded by learned Sessions Judge, Fatehabad, complainant is in this appeal. It is contended that impugned judgment is based on irrelevant, insufficient and conjectural grounds. It was found by learned Magistrate that despite service of notice, accused had failed to make payment of the cheque amount. It was never the case of the accused-respondent that rice mill in

question was not owned by M/s Ruldu Ram Rice and Cotton Mills or that complainant was not partner thereof. It was not the case of the accused-respondent, either in cross-examination or as a defence set up by her, that M/s A.K. Rice and General Mills, Tohana had not taken the premises on lease or that accused-respondent was not partner in the said A.K. Rice and General Mills. It was never pleaded by the accused-respondent that said M/s A.K. Rice and General Mills was not liable to pay the electricity charges. Rather, in her testimony, it was admitted by her that M/s Ruldu Ram Rice and Cotton Mills was taken on lease by her for two years. She did not deny that the complainant's firm had paid the amount of ₹66,758/- on account of electricity charges, which related to the lease period. The only defence taken by the accused was that cheque in question did not bear her signature. Learned Sessions Judge failed to take note of the fact that the banker of the accused-respondent while returning the cheque as unpaid, never remarked that cheque did not bear the signatures of the account holder i.e. accused-respondent. It is contended further that learned Sessions Judge made out a new case at his own to the effect that complainant had failed to produce any evidence regarding the accused being partner of M/s A.K. Rice and General Mills. It is further contended that in her defence, accused produced a handwriting expert, who took specimen signatures of the accused-respondent for the purpose of comparison but those specimen signatures were subsequent to the issuance of the cheque, which fact was rightly taken into consideration by the Trial Court while rejecting his testimony.

With all these submissions, prayer is made to set aside the judgment of acquittal recorded by learned Sessions Judge with a further prayer to restore the judgment of conviction and order of sentence as passed by the Trial Court.

6. Upon notice of motion, appearance was made on behalf of respondent No.1-accused on some of the dates but nobody made appearance on 31.01.2023 when the matter was listed for hearing.

7. I have considered submissions of learned counsel of the appellant and have also perused the record.

8. Cheque Ex. PW2/2 dated 15.09.2003 was admittedly issued from the account of the accused. As per the return memo issued by the banker of the accused, the cheque was dishonoured on 19.09.2003 with the remarks “insufficient funds”. Learned Trial Court rightly observed that return memo contains various clauses mentioning the reasons for returning the cheque as unpaid. Clause No.11 is available as - ‘drawers signature differs/required’. However, in this case cheque was not returned as unpaid due to difference in signatures of the drawer. In these circumstances, the defence taken by the accused to the effect that she had not signed the cheque could not have been taken into consideration.

9. In ***“L.C. Goyal v Mrs. Suresh Joshi” 1999 (3) SCC 376***, the cheque was returned by the bank with the only remarks “insufficient funds”. It was held by the Hon'ble Supreme Court that it clearly meant that signatures on the cheques were that of the drawer.

10. In another case titled as ***“Rohitbhai Jivanlal Patel v State of Gujarat and another”***, ***2019(2) R.C.R.(Criminal) 559***, cheques were presented to the bank concerned within the period of their validity and

were returned unpaid for the reason of either balance being insufficient or account being closed. The Hon'ble Supreme Court of India held that all basic ingredients of Section 138 as also of Sections 118 and 139 of the N.I. Act, apparent on face of record, therefore, it was required to be presumed that cheques in question were drawn for consideration and holder of the cheques received the same in discharge of the existing debt. Hon'ble Supreme Court held further that accused could not deny his signatures on the cheques in question.

11. In view of the factual and legal position above, learned Trial Court was correct in its approach in holding that accused could not deny her signature on the cheque. Accused in her defence examined one Shamsher Singh Malik, handwriting and fingerprint expert as DW2, who compared the specimen signatures of the accused taken from bail bonds, Vakalatnama, application of surrender-cum-bail and statement made before the Court and opined that signatures on the disputed cheque did not tally with the above said signatures on the described documents. Learned Trial Court rightly ignored the report of the handwriting expert after observing that all the sample signatures were obtained on the documents, which were subsequent to the cheque in question and it could be deliberate on the part of the accused to make different signatures so that they could not tally with her signatures on the cheque. Had the accused been genuine in her defence that cheque did not bear her signatures, she would have examined her banker along with the specimen signature sheet so as to prove that specimen signatures given in the bank did not tally with cheque.

12. Apart from above, as rightly observed by the Trial Court, before filing the complaint, legal notice was sent to the accused-respondent through registered post but she refused to receive the same. In ***C.C. Alavi Haji V. Palapetty Muhammed and another, 2007 (3) RCR (Criminal) 185,*** it has been held by Hon'ble Supreme Court that as and when notice sent by registered post is returned with the postal endorsement of refusal, due service is to be presumed.

13. In **Rangappa Vs. Sri Mohan, 2010 (3) Crimes 40 (S.C.)**, it has been held by Hon'ble Supreme Court that the very fact that accused had failed to reply to the statutory notice under Section 138 of the Negotiable Instruments Act led to the inference that there was merit in the complainant's version.

14. In present case, despite the notice, accused did not prefer to reply the same. Had the signatures on the cheque been forged or not that of accused, accused would have received legal notice, would have replied to the same and rather, would have approached the police or the other authorities with the complaint against the complainant regarding forgery of the signatures. No such step was ever taken. Apart from this, no suggestion whatsoever is there on the part of the accused as to how her cheque came to the possession of the complainant. Not sending reply to the legal notice in itself is sufficient to raise presumption against the accused.

15. On the basis of entire discussion as above, it is held that impugned judgment dated 11.12.2019 as recorded by learned Sessions Judge, Fatehabad cannot be sustained. Said judgment is hereby set aside.

The judgment of conviction as recorded by learned Trial Court on 07.11.2008 is hereby restored.

16. However, as far as the order of sentence dated 8.11.2008 is concerned, it is noted that cheque in question had been issued way back in 2003. The matter is, thus, more than 19 years old. Conviction has been recorded way back in 2008. Therefore, it is ordered that accused-respondent shall pay the compensation amount of ₹1,33,516/- as ordered by the Trial Court from the date of the said order i.e. 08.11.2008 along with interest @ 6% per annum till the date of payment, within a period of one month from today, failing which the entire sentence as imposed by the Trial Court shall be carried out by her.

17. To make it clear, in case the accused-respondent makes payment of ₹41,33,516/- as compensation to the complainant-appellant along with interest @ 6% per annum from 08.11.2018 till the date of payment within a period of one month from today, then rest of the sentence shall be deemed to be set aside. However, in case of her failure to do so, accused-respondent will have to undergo the entire sentence as imposed by the Trial Court.

18. Present petition is disposed of accordingly. Copy of this order be sent to learned Chief Judicial Magistrate concerned with the direction to ensure the compliance of this order and in case of failure of the same, accused-respondent be taken into custody for carrying out the sentence as imposed by the Trial Court.

(DEEPAK GUPTA)
JUDGE

February 06, 2023
sarita

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