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

243

**2023:PHHC:122429**
CRM-A-1255-MA-2016
Date of decision: September 14th, 2023

Rajesh

.....Applicant

Versus

Kamal Kumar

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present: Mr. Sukhdeep Singh, Advocate
for the applicant.

Mr. Anil Kumar Ahuja, Advocate
for the respondent.

**MANJARI NEHRU KAUL, J.**

The applicant-complainant (hereinafter referred to as 'complainant') is impugning the judgment and order dated 06.05.2016 passed by learned Judicial Magistrate 1st Class, Karnal, wherein the respondent-accused (hereinafter referred to as 'accused) was acquitted of charges framed against him in criminal complaint No.1025 of 2015 filed under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act').

2. As per allegations levelled in the complaint, the complainant extended a friendly loan of Rs.6,20,000/- to the accused in the presence of one Pawan. After being repeatedly requested by the complainant to repay the loan, the accused issued a cheque bearing No.039225 dated 15.09.2014 for a sum of Rs.6,20,000/- in his favour. However, when the cheque in question was presented by the complainant in the bank, it was returned vide return memo dated 17.09.2014 with the remarks 'Insufficient funds'. Legal notice dated

24.09.2014 (Exhibit C3) was then served by the complainant upon the accused asking him to make the payment but in vain.

3. The Court on the basis of the evidence and other material led, acquitted the accused by holding that the complainant had miserably failed to prove the case against the accused as no evidence much less cogent was led by him to prove the existence of legally enforceable debt, whereas the accused had been able to successfully rebut the presumption under Section 139 of the Act.

4. Learned counsel appearing for the complainant has reiterated the allegations levelled in the complaint in question by asserting that the accused had borrowed a sum of Rs.6,20,000/- from him. It has been submitted that the Court below had failed to appreciate that since the accused had not disputed his signatures on the cheque in question, therefore, a presumption under Sections 118 and 139 of the Act had arisen in favour of the cheque holder, which the accused had not been able to rebut. It was further argued that the trial Court had ignored the settled law while drawing an adverse inference against the complainant on the ground that there was no written agreement executed between the parties qua the alleged transaction. It was also argued that the complainant had enough financial capacity to advance the loan in question which found due corroboration from both, his income tax returns as well as the balance sheet. However, the Court erred in acquitting the accused on the ground that no Chartered Accountant had been examined by the complainant in support of his case.

5. *Per contra*, learned counsel for the respondent, while opposing the prayer and submissions made by the counsel opposite, has

submitted that the most crucial person, Pawan, in whose presence the loan was allegedly advanced by the complainant, for reasons, very strange, was not even examined by the complainant. Learned counsel further submitted that it was a matter of record that the complainant and the accused had various land transactions between then, and it was during those transactions, the cheque in question had been handed over to the complainant; when the accused asked the complainant to return those cheques, he was informed that as many as four cheques including the cheque in question had been lost. Subsequently, the accused then issued 'stop payment instructions' to his bank in the year 2011. Learned counsel has thus, asserted that the accused had successfully rebutted the presumption under Section 139 of the Act.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. Admittedly, no documentary evidence nor any witness stepped into the witness box on behalf of the complainant to prove the factum of a loan having been advanced by him to the accused. The least that the complainant could have done was to examine Pawan, who as per his own averment, was a witness to the loan transaction, however, for reasons, very strange, said Pawan did not step into the witness box. Furthermore, the complainant also did not produce any written receipt or agreement qua the loan amount of Rs.6,20,000/-. No doubt, the complainant did refer to some diary, wherein he had claimed to have recorded the loan transaction, however, said diary was neither produced during trial and concededly not even signed by the accused. Not only this, the complainant claimed to have received cash from one Parmod via RTGS, which in turn he loaned to the accused, however, even said

Parmod, was not examined by the complainant, and only a copy of the RTGS was produced. All these facts when seen in totality, do cast a shadow of doubt on the credibility of the complainant's version. Furthermore, it is a matter of record that the balance sheet on which the complainant placed reliance, was not even signed by him. Besides this, a perusal of the evidence on record does reveal a lot of inconsistencies, which in turn does create a dent in the case of the complainant.

8. As a sequel to the above, this Court concurs with the learned trial Court that the complainant had failed to lead any cogent evidence to prove his case. The accused, on the other hand, had been successful in rebutting the presumption under Section 139 by examining DW-1 Manoj Kumar and adducing evidence in his defence that four blank cheques had been given to the complainant for some land transactions that had taken place in Kanpur, and when the complainant was asked to return those cheques, he had been informed by the complainant that they had been lost, as a result of which the bank had been informed by the complainant to stop payment as a security measure. The evidence led by the accused in his defence finds due corroboration with the 'stop payment instructions' given by him with respect to cheque No.39225 Exhibit C1. Therefore, it is evident that the cheque in question had seemingly been misused by the complainant.

9. The instant application, therefore, stands dismissed.

**September 14th, 2023** **(MANJARI NEHRU KAUL)**
*Puneet* **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : No