IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-A-2397-MA-2018
Date of decision: 17.01.2023

Darshan Singh .....Applicant

Versus

Jaswinder Kaur .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Kulwant Singh, Advocate for the complainant.

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MANJARI NEHRU KAUL, J. (ORAL)

The complainant, by way of instant application under Section 378 (4) of the Code of Criminal Procedure (for short 'Cr.P.C.'), seeks leave of this Court for filing appeal against the judgement of acquittal dated 13.07.2018, passed by the learned Judicial Magistrate, Ist Class, Ludhiana, whereby complaint of the present complainant under Sections 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') was dismissed, by passing the impugned judgement of acquittal.

As per the allegations levelled in the complaint filed under Section 138 of the NI Act, the applicant/complainant (hereinafter referred to as 'the complainant') and the respondent-accused had been well acquainted with each other for more than 04 years. On a request made by the respondent, the complainant advanced a friendly loan of Rs.10 lakhs to her. On 19.01.2015, the respondent in order to discharge her liability towards the loan advanced, issued a cheque bearing No.371822 dated 19.01.2015 for an amount of Rs.10 lakhs in favour of the complainant, drawn on Oriental Bank of Commerce, Branch Chandigarh Road, Jamalpur Awana, Ludhiana. On presentation in the bank, the cheque was dishonoured vide memo dated 20.01.2015 with the remarks "Account Closed". The complainant served a legal notice upon the respondent on 04.03.2015, however, since the respondent failed to make the payment within the stipulated time frame of 15 days from the date of receipt of notice, the complaint in question was filed against the respondent.

The Trial Court, after going through the evidence on record, acquitted the respondent on the ground that the complainant had failed to prove his financial capacity to advance a huge loan in the sum of Rs.10 lakhs and hence the respondent had successfully rebutted the presumption under Section 139 of the NI Act.

Learned counsel for the complainant has argued that the impugned judgment dated 13.07.2018 passed by the learned Judicial Magistrate, 1st Class, Ludhiana was based on a misreading of the evidence as the Court below failed to appreciate that the signatures of the respondent on the cheque in question stood duly proved. Therefore, once it stood proved that the cheque in question had been issued by the respondent, presumption under Section 139 of the NI Act i.e. the cheque was given to discharge a legal liability, would be attracted in favour of the complainant. It has been further argued that the Trial Court also failed to appreciate that presumption under Section 139 of the NI Act had not been rebutted by the respondent as she had failed to lead any evidence in her defence.

Heard.

The defence raised by the respondent was that the complainant did not have the financial capacity to advance such a huge amount of Rs.10 lakhs. A perusal of the record shows that the complainant neither produced any documents with respect to his salary nor did he disclose in his income tax returns for the relevant period which could support his case qua a loan in the sum of Rs.10 lakhs having been advanced to the respondent. Further, during his cross-examination certain material contradictions came to the fore inasmuch as the complainant deposed initially that the loan amount advanced to the accused had been raised by him from "committees" but later he improved upon it and submitted that he had also obtained some amount out of the Rs.10 lakhs advanced to the respondent from his wife and children. Still further, strangely the complainant failed to spell out the exact amount which he had supposedly borrowed from his family members. Not only this, the complainant failed to bring on record a single document qua the money which he supposedly earned from the "committees" and which in turn had been allegedly loaned to the respondent.

Resultantly, with the above said observations made, the instant application stands dismissed.

17.01.2023 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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