2023: PHHC: 069335

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A No.2300-MA of 2016
Date of decision: 11th May, 2023

Sunder

... Appellant

Versus

State of Haryana & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Vinod Kumar, Advocate for
Mr. Rajesh Lamba, Advocate for the appellant.

MANJARI NEHRU KAUL, J.

The appellant/complainant (hereinafter referred to as, 'the complainant') is impugning judgment dated 04.10.2016 passed by the learned Judicial Magistrate 1st Class, Gurgaon whereby the respondent/accused (hereinafter referred to as, 'the accused') was acquitted of the charges framed against him in a criminal complaint under Sections 138/141/142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the Act').

As per the allegations levelled in the complaint, the complainant advanced a friendly loan in the sum of ₹ 16.00 lacs to the accused. In the discharge of his liability, the accused then issued a cheque bearing No.010909 dated 05.11.2014 for a sum of ₹ 16.00 lacs in favour of the complainant. However, on presentation, the cheque was returned with the remarks *'funds insufficient'*. A legal notice dated

09.12.2014 was then served by the complainant calling upon the accused to make the payment but in vain.

The Court below, on the basis of evidence and other material led, acquitted the accused by holding that the complainant had miserably failed to prove his case, as no evidence, much less cogent, had been led by him to show that he had the financial capacity to lend the amount in question, as he was working in DESU on a salary of ₹25,000/- per month and still further, there was no document to support the advancement of the loan in question.

Learned counsel appearing for the appellant/complainant has reiterated the allegations levelled in the complaint in question by asserting that the complainant had extended a friendly loan in the sum of ₹ 16.00 lacs to the accused, however, the Trial Court had failed to appreciate that the said loan was given on account of mutual trust between the parties as they had been well acquainted with each other since their childhood, and hence, no documentation was required. He has further submitted that the respondent had even admitted his signatures on the cheque in question and subsequently, failed to lead any cogent evidence to rebut the presumption under Section 139 of the Act.

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

Admittedly, no documentary evidence was led by the complainant to establish that an amount of ₹ 16.00 lacs had ever been advanced by him to the accused. It cannot be digested that a huge amount of ₹ 16.00 lacs would have been extended by the complainant to the accused as a friendly loan without executing any document in the said regard. Though it was submitted by the complainant that the loan transaction had taken place in the presence of his wife, however, for reasons very strange and best known to the complainant, his wife did not even step into the witness box to support his case. Furthermore, the complainant, while stepping into the witness box as CW-1, deposed that he was drawing a salary of ₹ 25,000/- per month while working in DESU; however subsequently, he deposed that he had advanced the alleged loan from the proceeds of the sale of a plot which he had sold, however, yet again for reasons best known to him, he failed to place on record any document in support of the sale of his plot, much less any money transaction which might have taken place qua the same. Not only this, on the one hand he deposed that he had withdrawn the amount, which he had extended as a friendly loan, from his bank account; however, he did not even produce a single withdrawal slip of the bank in support thereof.

As a sequel to the above, this Court concurs with the observations made by the Court below that the complainant, who admittedly was working on a meagre salary of ₹ 25,000/- per month, would not have been financially capable to advance a loan of ₹ 16.00 lacs. The complainant, thus, failed to prove that there existed a legally recoverable debt payable by the accused to him.

Leave to appeal, is thus, declined.

(MANJARI NEHRU KAUL)
JUDGE

May 11, 2023
rps

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