

238 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-A-1722-MA-2017  
Decided on : 11.10.2023

Madan Mohan

..... Applicant

Versus

M/s R.K.Industries and another

..... Respondents

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

Present : Mr. Ish Puneet Singh, Advocate  
for the applicant.

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**Manjari Nehru Kaul, J.(Oral)**

Instant application has been filed by the applicant under Section 378(4) Cr.PC feeling aggrieved against the order dated 05.05.2017 passed by learned Judicial Magistrate Ist Class, Jalandhar vide which the accused has been acquitted of the charges framed against him.

2. Learned counsel for the applicant (hereinafter referred to as 'complainant') has submitted that the impugned judgment suffers from patent illegality as there had been complete misappreciation of the evidence on record, by the learned trial court. It has been argued that the signatures on the cheque in question were not denied by respondent No.2 (hereinafter referred to as 'accused') and thus, presumption under Section 139 of Negotiable Instruments Act (hereinafter referred to as 'the Act') arose in favour of the complainant that the cheque had been issued in discharge of a legally enforceable debt/legal liability. Furthermore, when the financial capacity of the complainant to advance the cheque in question was questioned, he

produced on record his passbook Ex.D-1 wherein it stood reflected that Rs.3 lakhs had been withdrawn by him, which in turn were given to the accused along with another amount of Rs.50,000/-. Learned counsel for the complainant has still further urged that the complainant had examined one witness, CW-2 Vishal Chabra, who also proved an agreement dated 03.10.2009 (Ex.CW-2/1), which had been entered into between the complainant and the accused vide which the loan transaction had been reduced into writing. However, the Trial Court had committed an error in disbelieving all these cogent pieces of evidence only due to the testimony of the handwriting Expert DW-1 Sukhjinder Singh, who was examined by the accused; the handwriting expert gave an opinion that though the signatures on the document were that of the accused, however, they had been lifted from some other document. Learned counsel has vehemently asserted that the scope of the opinion given by the handwriting expert was limited just to determine whether the signatures were of the accused or not; once it stood established that the loan agreement bore the signatures of the accused, the Trial Court should not have ignored the said agreement while acquitting the accused. Learned counsel has thus, contended that the Trial Court had gravely erred in merely basing its findings on the conjecture that the cheque in question pertained to a dispute between one Vikas Bhandari, nephew of the complainant, and the accused, and as Vikas Bhandari had not returned the cheque, which had now been misused by the complainant. Learned counsel has submitted that there was nothing on record to even remotely suggest that

the cheque had been misused by the complainant whereas on the other hand, there was enough cogent evidence led by the complainant to show that the cheque in question had been advanced by the accused in favour of the complainant in discharge of his legal liability.

3. Heard learned counsel for the complainant and perused the relevant material on record.

4. The complainant submitted his passbook Ex.D-1 in support of the withdrawal of Rs.3 lakhs from his bank account, however, this alone would not prove that the said amount had been advanced to the accused. Though the complainant relied upon one loan agreement, Ex.CW-2/1, however, it is very strange that there was no mention at all about this crucial document either in the complaint or even during his evidence by the complainant before the Trial Court. Moreover and significantly DW-1 Sukhjinder Singh, handwriting expert, while stepping into the witness box, deposed that the signatures on Ex.CW-2/1 had been lifted from another document, which without a doubt, cast a big question mark on the genuineness of this document.

5. It would be worthwhile to note that the presumption under Section 139 of the Act in favour of the complainant, is a rebuttal one. The accused claimed that there was a dispute with Vikas Bhandari i.e. nephew of the complainant and also presented a compromise Ex.DW-4/1 where it stood reflected that Vikas Bhandari had agreed to return the cheques, however, he had not abided by the compromise. The accused also raised a plea before the trial court that the loan agreement Ex.CW-2/1 was a fabricated document,

which was duly proved in the testimony of DW-1. In the facts and circumstances, respondent-accused successfully rebutted the presumption under Section 139 of the Act, based on a preponderance of probabilities.

6. As a sequel to the above, the present application being devoid of any merit stands dismissed.

(MANJARI NEHRU KAUL)  
JUDGE

11.10.2023  
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| Whether speaking/reasoned: | Yes/No |
| Whether reportable :       | Yes/No |