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

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**CRM-A-2641-MA-2018
Date of decision: 07.02.2023**

Rajesh Sorout .....Appellant

Versus

Deepak .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Gorav Kathuria, Advocate for the appellant.

Mr. Johan Kumar, Advocate for the respondent.

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MANJARI NEHRU KAUL, J. (ORAL)

The appellant-complainant (hereinafter referred to as 'the complainant') is impugning the judgment dated 09.04.2018 passed by learned Judicial Magistrate 1st Class, Faridabad whereby the respondent-accused (hereinafter referred to as 'the accused') was acquitted of the charges framed against him in a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act').

As per the allegations levelled in the complaint, the complainant advanced a friendly loan in the sum of Rs.1,40,000/- to the accused on 15.11.2015. The accused agreed to repay the loan to the complainant within six months. After repeated requests made to the accused, he issued a cheque bearing 000013 dated 20.04.2016 for Rs.1,40,000/- drawn on Bank of India, Faridabad. On presentation of the cheque by the complainant, it was returned vide return memo dated 17.05.2016 with the remarks “Funds Insufficient”. The complainant thereafter sent a legal notice dated 15.06.2016 calling upon the accused to make the payment but in vain. The Court below on the basis of the evidence and other material led, acquitted the accused by holding that the complainant had miserably failed to prove his case against the accused as no evidence much less cogent was led by the complainant to show that the cheque in question had been issued by the accused in his favour in discharge of any legal debt or liability.

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 Rs.1,40,000/- to the accused. He has submitted that the Court below failed to appreciate that the respondent-accused had admitted to his signatures on the cheque in question. Not only this, a false defence had been raised by the respondent-accused that the cheque had been given as a security which was in turn misused by the complainant. Learned counsel argued that it could not be digested that the respondent-accused neither asked the complainant to return the cheque nor did he lead any evidence in support of the complainant being asked to return the security cheque and the latter refusing to hand over the same. Learned counsel submits that the Court below failed to appreciate that the accused had not rebutted the presumption under Section 139 of the NI Act by leading any cogent evidence in support of his defence.

Learned counsel appearing for the respondent-accused has opposed the submissions made by the counsel opposite by reiterating that the cheque in question had not been issued by the accused in discharge of any legal debt or liability and rather it was a blank signed security cheque which had been taken by the complainant from the accused in respect of a loan given to him in the sum of Rs.20,000/- by the complainant. Learned counsel has vehemently argued that the loan amount of Rs.20,000/- already stood repaid to the complainant, however, the security cheque given to the complainant had been misused by him and enough convincing evidence had been led before the Court below in support thereof.

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

Admittedly, no documentary evidence was led by the complainant to establish that an amount of Rs.1,40,000/- had been advanced by him to the accused. It cannot be digested that the complainant would have extended a friendly loan of a huge some of money without executing any document. As per the admitted case of the complainant, the loan advanced was interest free. This Court concurs with the observations made by the Court below that had any such loan been advanced to the accused by the complainant, the same would have found reflected in his Income Tax Returns. It is very strange that the loan in the sum of Rs.1,40,000/- was allegedly given to the accused in cash and as per the complainant, some money out of the loan of Rs.1,40,000/- was withdrawn from the commission which he had received from LIC, some was from his agricultural income and some amount of money had been taken by the complainant from his father. The best witness in support of his case could have been his father, however, for reasons best known to the complainant, his father did not step into the witness box. On the other hand, the accused examined one Pawan who stepped into the witness box as DW-1, in whose presence the loan amount of Rs.20,000/- was repaid to the complainant.

As a sequel to the above, this Court does not find any illegality much less perversity in the impugned order. Accordingly, the instant appeal stands dismissed.

07.02.2023 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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