

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-610-MA-2016 (O&M)
Reserved on: 25.07.2023
Date of decision: 22.09.2023

RANBIR SINGH @ RANDHIR SINGH

...Applicant

VERSUS

NAVNEET CHAUHAN

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. M. S. Khaira, Senior Advocate with
Mr. Raj Kumar Rana, Advocate
for the applicant.

Mr. Sumit Jain, Advocate
for the respondent.

JASGURPREET SINGH PURI, J.

1. The present application has been filed under Section 378(4) Cr.P.C. seeking leave to appeal against the judgment dated 12.01.2016 passed by the learned Sessions Judge, Ambala, whereby the respondent has been acquitted.
2. The present applicant, namely, Ranbir Singh @ Randhir Singh filed a complaint against the respondent, namely, Navneet Chauhan under Section 138 of the Negotiable Instruments Act, 1881 pertaining to a cheque of Rs.38,00,000/-. The learned Judicial Magistrate 1st Class, Ambala convicted the respondent in the aforesaid complaint vide judgment dated 14.01.2015 and vide separate order dated 17.01.2015, sentenced him to undergo rigorous imprisonment for a period of two years and to pay the cheque amount of Rs.38,00,000/- with interest at the rate of 9% per annum from the date of filing

of the complaint till its realization. Thereafter, the respondent-accused preferred an appeal before the learned Sessions Judge, Ambala, wherein vide judgment dated 12.01.2016, the learned Sessions Judge, Ambala set aside the judgment of conviction dated 14.01.2015 and order of sentence dated 17.01.2015 passed by the Judicial Magistrate 1st Class, Ambala and acquitted the respondent-accused of the charges while accepting the appeal. Now the present applicant, who is a complainant has filed this application under Section 378(4) Cr.P.C. seeking leave to appeal against the judgment dated 12.01.2016 passed by the learned Sessions Judge, Ambala.

3. Learned Senior Advocate appearing on behalf of the applicant submitted that it is a case where a cheque was issued by the respondent-accused, which is not in dispute in the present case and the signatures on the cheque issued by the respondent-accused is also not in dispute and therefore a statutory presumption arose in favour of the applicant-complainant which has not been adequately rebutted by the respondent and therefore the Judicial Magistrate 1st Class, Ambala has rightly convicted the respondent of the charges. He further submitted that the respondent-accused had issued the aforesaid cheque amounting to Rs.38,00,000/- as a security and his liability was co-extensive in case the money was not returned by the persons regarding whom the security was ensured. He further submitted that a cheque of security is equally enforceable being a co-extensive liability and therefore it cannot be said that the respondent did not have any liability to pay. He also submitted that the reason for issuance of a security cheque by the respondent was that in pursuance to an agreement to sell between the applicant-complainant and three other persons who were the owners of the land, an earnest money was paid to

the tune of Rs.96,00,000/- and for ensuring the execution of sale deed the aforesaid cheque was issued which therefore became a legally enforceable debt. He further submitted that even if the respondent-accused acted as a guarantor, he was liable under the provisions of Negotiable Instruments Act, 1881 in case the cheque issued by him was dishonoured due to insufficiency of funds or any other relevant reason under the law especially in view of the fact that when he has himself admitted the issuance of the cheque and his signatures are also not in dispute. He further submitted that it is not material as to whether the cheque was issued for his own personal liability or for some others' personal liability and the liability is covered within the parameters of Section 138 of the Negotiable Instruments Act, 1881. He has referred to a judgment of the Hon'ble Supreme Court in **I.C.S.D. Limited versus Beena Shabeer and another, 2002 (6) SCC 426** and submitted that even qua the guarantor, liability can be enforced. He further submitted that it was also observed by the Hon'ble Supreme Court that the legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well. He further submitted that therefore no distinction can be made between the principal borrower or a guarantor since the liability can be of others as well. He further submitted that in view of the aforesaid position, the applicant may be granted leave to appeal.

4. On the other hand, Mr. Sumit Jain, Advocate appearing on behalf of the respondent submitted that there is no dispute with regard to the proposition of law that once the issuance of a cheque and signatures are not disputed then a statutory presumption arises in favour of a complainant. He further submitted that however such a presumption is always rebuttal in nature

and it depends upon the facts and circumstances of each and every case. He further submitted that the degree and standard of proof of rebuttal is based upon preponderance of probabilities and not beyond reasonable doubts. He also submitted that apart from the above, a legally enforceable debt has to be in existence to bring a case under the provisions of Section 138 of the Negotiable Instruments Act, 1881. He further submitted that however in the present case, the existence of any kind of debt or any legally enforceable debt was absent, which has been duly proved on record by way of leading evidence and therefore the learned Sessions Judge, Ambala has rightly acquitted the respondent-accused of the charges while setting aside the judgment of conviction and order of sentence passed by the Judicial Magistrate 1st Class, Ambala.

5. I have heard the learned counsel for the parties.

6. A complaint was filed by the applicant-complainant, namely, Ranbir Singh @ Randhir Singh by alleging that the respondent-accused, namely, Navneet Chauhan along with three more persons, namely, Nar Singh, Satnam Singh and Kuldeep Singh, who were partners in the land situated in village Khera, Tehsil Mullana had entered into an agreement to sell the land to the applicant-complainant which was to be sold by the aforesaid three partners through the respondent-accused and his uncle Jasbir Singh. The aforesaid three partners received an amount of Rs.96,00,000/- from the applicant-complainant through the respondent-accused and his uncle Jasbir Singh and an agreement to sell was also executed. However, the sale deed was not executed and ultimately a compromise was effected between the parties and the agreement to sell was cancelled. Two cheques were issued i.e. one of Rs.30,00,000/- dated 05.10.2012 and other was of Rs.38,00,000/- dated 05.03.2013 and the subject matter of the

present complaint pertains to a cheque amounting to Rs.38,00,000/- which was issued by the respondent-accused.

7. Learned Judicial Magistrate 1st Class, Ambala while deciding the complaint observed that once the issuance of cheque and the signatures are admitted then a statutory presumption has arisen in favour of the complainant-applicant and the same has not been rebutted by the accused-respondent and therefore the respondent-accused was convicted.

8. However, in an appeal preferred by the respondent-accused, the learned Sessions Judge, Ambala set aside the judgment of conviction dated 14.01.2015 and order of sentence dated 17.01.2015 passed by the Judicial Magistrate 1st Class, Ambala. It was so observed by the learned Sessions Judge, Ambala that there was an agreement to sell dated 09.07.2011 which has been proved on record as Ex. C7, whereby three persons, namely, Nar Singh, Satnam Singh and Kuldeep Singh agreed to sell 160 kanals of their land at the rate of Rs.16.65 lacs per acre in favour of the applicant-complainant. An amount of Rs.30,00,000/- was received as earnest money and another Rs.20,00,000/- were to be paid in the next thirty days. The last date for execution of the sale deed was agreed to 15.12.2011. Ex. C8 is the copy of the receipt dated 11.08.2011 of the aforesaid amount of Rs.20,00,000/- which was also paid. Thereafter, another amount of Rs.46,00,000/- was also paid and receipt of the same is Ex. C9 dated 18.10.2011, whereby the amount was received by the aforesaid three persons from the applicant-complainant Ranbir Singh @ Randhir Singh. The aforesaid agreement and the receipts etc. were witnessed by some persons but it was not witnessed by the respondent-accused, namely, Navneet Chauhan. Thereafter, the matter was compromised between the parties and a cancellation deed was

executed which has been proved on record as Ex. C10 dated 04.09.2012 pertaining to the aforesaid agreement. It has been specifically mentioned in the aforesaid cancellation deed that the earnest money of Rs.96,00,000/- has been returned and nothing has been left. This cancellation deed of agreement is signed by the vendors and the vendee and witnesses by one Mahi Pal son of Karan Singh, resident of village Malai. All the aforesaid documents i.e. Ex. C7 to Ex. C10 were not signed by the respondent-accused, namely, Navneet Chauhan. CW-3, namely, Suneet Kumar, who proved the aforesaid documents i.e. Ex. C7 to Ex. C10, in his cross-examination admitted that the accused-respondent and his uncle Jasbir Singh were not the signatories to Ex. C7 to Ex. C10. Apart from the above, even in the statement of complainant-applicant himself i.e. CW-1, namely, Ranbir Singh, he also stated that he had given an amount of Rs.96,00,000/- to one Jasbir Singh and it was paid to the vendors i.e. Nar Singh, Satnam Singh and Kuldeep Singh through Jasbir Singh. In other words, the name of the respondent-accused, namely, Navneet Chauhan does not figure in the statement of the applicant-complainant that the aforesaid Rs.96,00,000/- was paid through the respondent-accused but it was paid through other person, namely, Jasbir Singh.

9. The learned Sessions Judge, Ambala also observed that from the record and the statements, there is nothing to reveal that the respondent-accused had taken up the responsibility to refund the earnest money through cheque of Rs.38,00,000/- Ex. C1 and in this way, the respondent-accused is neither amongst the vendors nor vendee nor any attesting witness and nor his signatures appeared on any document whatsoever. The only reason as to why the respondent-accused had issued a cheque was that the applicant-complainant had

told him that he will get an agreement to sell executed in favour of Jasbir Singh and for that reason, a security cheque was given but later on the applicant-complainant resiled from the said promise and even the agreement itself was cancelled and the entire earnest money was repaid back as per Ex. C10.

10. This Court finds force in the arguments raised by learned counsel appearing on behalf of the respondent. Although in the present case, the issuance of cheque and signatures are not in dispute and therefore statutory presumption arose in favour of the applicant. However, one of the essential conditions for invoking Section 138 of the Negotiable Instruments Act, 1881 is that there has to be an existence of a legally enforceable debt or other liability. However, from a perusal of the record and the judgments passed by the learned Judicial Magistrate 1st Class, Ambala and learned Sessions Judge, Ambala, it is clear that no such legally enforceable debt or other liability was in existence. It appears that the cheque was issued by the respondent-accused with regard to an agreement to sell Ex. C7 and the earnest money of Rs.96,00,000/- was paid but thereafter a dispute arose between the vendors and the vendee and the said agreement to sell was cancelled vide Ex. C10 and there is a specific recital in the cancellation deed that the entire amount of Rs.96,00,000/- has been paid back. Cheque was issued so that sale deed be executed as per agreement but the agreement to sell itself was cancelled with return of entire earnest money which is proved on record. The present respondent-accused is neither the signatory of any of the documents including agreement to sell or cancellation deed nor any other document on the record and therefore qua the respondent-accused, who is the sole accused in the present case, no debt or legally enforceable debt could be proved by the applicant-complainant. Therefore, the essential condition for

invoking Section 138 of the Negotiable Instruments Act, 1881 with regard to existence of a legally enforceable debt or other liability is absent in the present case. So far as the reliance as placed by learned Senior Advocate appearing on behalf of the applicant on the judgment of the Hon'ble Supreme Court in *I.C.S.D. Limited's case (supra)* is concerned, the aforesaid judgment is distinguishable from the facts and circumstances of the present case. In the present case, however, a legally enforceable debt qua the present respondent-accused is itself absent and the liability of the present respondent-accused could not be proved on record.

11. This Court is of the view that the learned Sessions Judge, Ambala has rightly set aside the judgment of conviction dated 14.01.2015 and the order of sentence dated 17.01.2015 passed by the learned Judicial Magistrate 1st Class, Ambala and acquitted the respondent-accused of the charges.

12. Therefore, this Court does not deem it fit and proper to grant leave to appeal to the applicant in the present case.

13. Consequently, the present application seeking leave to appeal under Section 378(4) Cr.P.C., is hereby dismissed.

22.09.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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