IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-585-2019
Date of decision : 01.03.2023

Gurmeet Singh ....Applicant

Versus

Manpreet Singh ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sohrab Dhanda, Advocate for
Mr. A.S. Manaise, Advocate for the applicant.

MANJARI NEHRU KAUL, J. (ORAL)

A challenge has been laid to the judgment dated 14.12.2018 passed by the JMIC, Ludhiana vide which the respondent-accused (hereinafter referred to as accused) was acquitted for offence under Section 138 of the Negotiable Instruments Act.

As per the allegations levelled in the complaint, accused and complainant were residing in the same vicinity and had close relations with each other. The accused took a friendly loan of Rs.3 lacs from the complainant in March, 2017. The accused in discharge of his legal liability issued a cheque No.044541 dated 01.09.2017 for Rs.3 lacs. The cheque was dishonoured by the bank on its presentation vide memo dated 04.09.2017 with the remarks 'funds insufficient'. Complainant, thereafter, issued a legal notice dated 16.09.2017 but still the accused failed to make payment within 15 days. Hence, the complaint in question was instituted by the complainant.

Learned counsel for the applicant vehemently argued that the trial Court erroneously observed that the complainant had failed to mention qua the advancement of the loan installments in his legal notice as well as in the complaint by ignoring that the loan in question had been advanced to the accused in March, 2017 by the complainant by pledging his gold jewellery. No doubt, there was no writing or document executed between the parties regarding the loan advanced, however, it was on account of mutual trust and intimate relations between them. Learned counsel further submitted that as far as the financial capacity of the complainant to advance the loan in question was concerned, since the complainant had worked in Dubai for almost 10 years till 2007, he had enough finances at his disposal. Even though, thereafter, he had not been working but he had been living with his two sons with whom he had a joint account and hence he was financially very comfortable. Learned counsel submitted that in the above circumstances, the complainant did have the financial capacity to advance the loan in question to the accused. It was also further argued that the defence put up by the accused that the security cheques which had been given to a Finance Company in respect of a vehicle financed by it and had been misused by the complainant, stood belied from the fact that no finance company would have ever handed over the security cheques to anyone except the person who had given the security cheques i.e. the accused in the instant case. Learned counsel also asserted that since the signatures on the cheque had not been disputed by the accused, therefore, a presumption also arose under Section 139 of the NI Act in favour of the complainant that the cheque in question had been issued in discharge of a legally enforceable debt.

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

It is a matter of record that in his cross-examination the complainant admitted that after his return from Dubai in the year 2007, he did not have any source of income and was totally dependent on his sons. Still further, the complainant also admitted that when the accused had got a vehicle financed from one Tara Enterprises, blank security cheques had been given by the accused to the finance company in his presence. It was submitted by the learned counsel for the petitioner that a lump sum amount had been given to the accused in March, 2017, however, during his cross-examination, the complainant deposed to the contrary that he had advanced Rs.40,000/- and Rs.60,000/- to the accused in the year 2014 and Rs.2,10,000/- in March, 2017, which fact he had strangely omitted to mention in his complaint. It cannot be digested that a person who as per his own admission had no source of income and was completely dependent on his sons, would have advanced a huge sum of money to the accused and that too by pledging his gold ornaments. The presumption under Section 139 of the NI Act, thus, stood successfully rebutted by the accused on a preponderance of probabilities.

As a squeal to the above, this Court does not find any infirmity much less illegality in the impugned judgment.

Prayer for leave to appeal is declined.

01.03.2023 **(MANJARI NEHRU KAUL)**
ps-I **JUDGE**

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