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

CRM-M-20114-2012 (O&M)
Date of decision : 13.09.2023

Sukhwinder Singh

...Petitioner

Versus

Ramesh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present: Mr.Ankur Sharma, Legal Aid Counsel for the petitioner

None for the respondent.

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AMAN CHAUDHARY, J.

1. Present petition has been filed for setting aside the order dated 10.02.2012 passed by learned Additional Sessions Judge, Patiala and judgment dated 05.01.2012 rendered by Judicial Magistrate, 1st Class, Patiala, vide which the complaint under Section 138 of the Negotiable Instruments Act (for short 'NI Act') was dismissed.

2. Shorn and short of unnecessary details, the facts, culminating in the filing of the present petition, are that as alleged, the accused-respondent borrowed a friendly loan of Rs. 2,20,000/- from the complainant-petitioner and in order to discharge the liability, he issued a cheque bearing No.598270 dated 19.05.2010 in his favour. But when the complainant presented the said cheque through his banker, it was dishonoured with remarks "Insufficient Funds". Thereafter a legal notice was served to the accused to make the payment, but to no avail. Consequently, the complaint was filed.

3. A notice of accusation was served upon him, to which he

pleaded not guilty and claimed trial. To prove his case, the complainant himself appeared as CW-1 and also tendered certain documents.

4. The statement of the accused was recorded under Section 313 Cr.P.C. where evidence against him was put to him, which he refuted. In defence, no evidence was led.

5. On scrutinizing the evidence led by the parties, the trial Court acquitted the accused-respondent vide judgment dated 05.01.2012. Being aggrieved, the complainant-petitioner which was dismissed being not maintainable by learned Additional Sessions Judge, Patiala vide order dated 10.02.2012.

6. Challenge to the aforesaid judgment and order has been made in the present petition.

7. A prayer has been made by learned counsel for the petitioner to treat the present petition under Section 378(4) CrPC, regarding which reliance is placed on **Surjit Singh vs. Rama Rani and another**, CRM-M-53373-2022, decided on 09.05.2023. Ordered accordingly.

8. Learned counsel for the applicant-petitioner submits that the trial Court has committed a grave error while dismissing the complaint, as there was sufficient evidence that the accused-respondent had taken a loan and in lieu of which he had issued the cheque in question. He had nowhere denied his signature on the cheque. All the necessary ingredients of Section 138 of NI Act were present in the case and the accused should have been held liable thereunder.

9. None has appeared on behalf of the respondent.

10. Heard and perused the case file.

11. It is apposite to refer to the Explanation to Section 138 of the

Negotiable Instruments Act, which reads as under :

> "**138 Dishonour of cheque for insufficiency, etc., of funds in the account**.
>
> xx xx xx
>
> Explanation. - Until the debt is legally recoverable the drawer of the cheque cannot be fastened with the liability under section 138 of the Act."

12. The trial Court while dismissing the complaint, recorded the following findings:

> "16. Coming back to the facts of the instant case, perusal of the complaint moved by the complainant shows that entire complaint is absolutely silent about the date of the advancement of the loan to the accused person. However, during the course of cross-examination, complainant has divulged that he had advanced the loan amount to the accused person firstly on 15.07.2005 and secondly on 5.8.2005. Therefore, in view of the provisions of Limitation Act, 1963, the debt could have been recovered latest by 5.8.2008. However, perusal of date on the cheque in question shows that cheque has been issued on 19.5.2010. Therefore, from the perusal of aforementioned facts it becomes crystal clear that before the cheque could be issued, the debt against the accused person had become time barred and even it is assumed that cheque in question was issued by the accused person it was issued in lieu of a time barred debt."

13. A gainful reference can be made to the judgment in **Manjit Kaur vs. Vanita,** 2010 (3) RCR (Criminal) 574, wherein a cheque issued in the year 2003 in respect of the loan advanced in 1999, was held not be legally enforceable, this Court held that, "Adverting to the facts of the instant case, the cheque was issued on 28.6.2003. On reckoning, it works out that the loan was advanced somewhere in June, 1999. A meticulous perusal of the evidence on record would reveal that the appellant has not produced any document or other evidence revealing that the accused-respondent had acknowledged the debt within three years from the date of loan. Thus, by the

time, the cheque was issued, the debt became barred by limitation because no acknowledgement was obtained before the expiry of three years from the date of loan. section 18 of the Limitation Act, 1963 deals with the theory underlying the doctrine of acknowledgement. The true principle underlying an acknowledgement is that it merely renews the liability and gives the creditor or claimant a fresh period of limitation according to the nature of the liability which exists at the time of the acknowledgement. An acknowledgement cannot be regarded as evidentiary of the debt but an acknowledgement that a person owes money to another, a specified person is good evidence of his owing money to another. The dishonoured cheque Ex.P1 cannot be treated as acknowledgement under Section 18 of the Limitation Act, since the acknowledgement should be before the period of limitation is over and that it should be in writing. Thus, it cannot be said that the appellant has been able to prove that Ex. P1 was in relation to a legally enforceable debt or liability in law as the same was admittedly issued after more than three years of the advancement of the alleged amount as loan. So, if the matter is viewed in the background of the observations rendered in re: Ashwani Satish Bhat (Mrs.) (supra), it turns out that the accused-respondent had issued the cheque in 2003 when the debt had already become time barred. The acknowledgement of the alleged amount in 2003 was not valid acknowledgement under Section 18 of the Limitation Act and consequently, it was not a legally enforceable debt."

14. In the case in hand, the petitioner could not prove even the advancement of loan. There were glaring discrepancies in his testimony. Neither was the exact amount of loan stated by him nor the date on which he had given it.

15. The learned counsel for complainant-petitioner was unable to point out any material, so as to warrant any interference in the present matter.

16. The trial Court has examined the matter in the right perspective and recorded the cogent reasons in this behalf and arrived at the correct conclusion that the debt had become time barred.

17. This Court finds there to be no patent illegality or legal infirmity in the impugned judgment of acquittal. Accordingly, the present petition is dismissed.

(AMAN CHAUDHARY)
JUDGE

13.09.2023
gsv

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No