IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.709 of 2022

Date of decision: 02.03.2023

Surinder Singh

… Petitioner

Versus

Kamal Gandhi @ Minki

… Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sudhir Rana, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.

The petitioner is impugning the judgment dated 18.02.2021 passed by learned Sessions Judge, Karnal whereby it set aside the judgment of conviction dated 16.08.2018 and order of sentence passed by learned Judicial Magistrate 1st Class, Karnal for commission of offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the Act').

As per the allegations levelled in the complaint, the petitioner/complainant advanced a friendly loan of ₹ 1,60,000/- to the accused on an assurance that the same would be returned by the accused within the next three months. Thereafter, in discharge of his legal liability, the respondent/accused issued cheque No.057455 dated 31.01.2017 for an amount of ₹ 1,60,000/- in favour of the complainant drawn on Punjab National Bank, Karnal. On presentation of the said cheque, it was returned vide memo dated 03.02.2017 with the remarks '*funds insufficient'*. The complainant duly intimated the accused about the same, however, the accused requested the complainant to present the said cheque again in the first week of March 2017. When the cheque was again presented, it was dishonoured vide memo dated 04.03.2017 with the same remarks i.e. '*funds insufficient'*. Legal notice dated 16.03.2017 was then served upon the accused by the complainant requesting him to make payment of the cheque amount within the next 15 days. Even though, the accused received the said legal notice, however, he neither replied to the same nor did he pay the cheque amount to the complainant. Left with no other remedy, the petitioner filed the complaint in question under Section 138 of the Act.

Learned counsel appearing for the petitioner inter alia contends that the lower appellate Court failed to appreciate that the respondent had miserably failed to rebut the presumption under Section 139 of the Act and he had admitted his signatures over the cheque in question. Once he had admitted his signatures on the cheque in question, the only inference that could have arisen was that the cheque had been issued in discharge of a legally enforceable debt/liability.

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

As per the defence taken by the respondent/accused, in June 2012, he had taken a loan of ₹ 20,000/- from the complainant and in lieu thereof had issued a blank signed cheque. After making payment of the loan amount of ₹ 20,000/-, when he asked the complainant to return his cheque, the complainant told him that the said cheque had been lost. No doubt, the learned Judicial Magistrate 1st Class, while convicting the accused, discarded the defence raised by the accused as to why he had failed to report qua the loss of the cheque and not asked his bank to stop payment, and as to why he had not examined any handwriting or fingerprint expert to prove that the contents in the cheque had not been filled-in by him, however, as has also been rightly observed and noticed by the learned appellate Court, the cheque book of the accused, out of which the relevant blank cheque leaf had been given to the complainant, had been issued in the year 2012 which stood duly proved from Ex.DW1/B. Still further, the factum of as many as 8 cheques from the cheque-book of the accused, which was issued in the year 2012 and used upto 03.02.2016, stood proved from the statement of his accounts Ex.DW1/A. It is also a matter of record that thereafter a new cheque book was issued to the accused. Hence, this Court concurs with the observations of the learned lower appellate Court that the cheque in question had been issued in the year 2012, as had been pleaded by the accused.

Strangely and interestingly, the complainant during his cross-examination stated that the cheque in question had been signed and filled-in by the accused at his house. He further had stated that he had written his own name against the ‘payee’ but after cutting it, the accused had filled in the complainant’s name and had also signed above the cutting. The only inference that could be thus drawn is that the entire cheque had been written and signed at the same time by the accused. However, it transpires that cheque Ex.C2 was filled in with different inks. The pen used by the accused was different from the pen which had been used while filling in the other details. Not only this, a perusal of the impugned order further reveals that in one of the columns, the amount in figures had been changed from being initially filled in as ₹ 10,000/-. Later, the figure of ‘1’ was converted into ‘6’ and before that figure of ‘1’, it was converted into ₹ 1,60,000/-. It was not even the case of the complainant that the accused had mistakenly written the figure ₹ 10,000/- and then later-on changed it to ₹ 1,60,000/-.

This Court, in the above circumstances, has no reason to disagree with the learned lower appellate Court that the accused had been successful in raising a probable defence and the complainant had been unsuccessful in proving the existence of a legally enforceable debt/liability. Moreover, though on one hand it was claimed by the complainant that he had close friendly relations with the accused, however, he was totally unaware about the family of the accused. Hence, in the circumstances, it does not appeal to prudence as to why a person would extend a huge loan in the sum of ₹ 1,60,000/- to a mere acquaintance.

As a sequel to the above, there being no merit in the instant revision petition, the same stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

March 2, 2023
rps

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