

274 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2813-2010
Decided on : 30.11.2023

Hardip Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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

Mr. Mohit Kapoor, Addl. AG, Punjab.

Mr. Ramesh Sharma, Advocate
for respondent No.2.

Manjari Nehru Kaul, J.(Oral)

The petitioner is aggrieved against the judgment dated 21.05.2010 passed by learned Sessions Judge, Jalandhar vide which appeal preferred by respondent No.2 against the judgment dated 12.01.2009 of the trial Court was allowed and she was acquitted of the charges framed against her under Section 138 of the Negotiable Instruments Act (hereinafter refereed to as 'the Act') in complaint case titled as Hardip Singh vs. Sukhwinder Kaur and another.

2. Learned counsel for the petitioner-complainant (hereinafter referred to as 'complainant) *inter alia* contends that based on the evidence led before the learned trial Court including his oral testimony, it was evident that the accused-respondent had purchased gold ornaments from his shop on credit for a sum of Rs.56,000/-. Additionally, the respondent-accused had also received Rs.1,50,000/- from the complainant for purchasing some other items related to

the forthcoming marriage of her sister, which was to be solemnized on 02.08.1998. Subsequently, on 17.08.1998, respondents-accused paid Rs.6,000/- in cash to the complainant and also issued a cheque bearing No.103539 drawn on Oriental Bank of Commerce in favour of the complainant to settle the remaining amount, which she owed to him.

3. Learned counsel for the complainant has contended that despite sufficient cogent evidence having been adduced indicating that the respondents-accused Sukhwinder Kaur as well as Tajinder Singh had issued the aforementioned cheque Ex.A-4 from their account to settle their legal debt and obligations towards the complainant, amounting to Rs.2 lakhs, the Appellate Court erroneously set aside the well reasoned judgment of the trial Court wherein the respondent-accused had been convicted and sentenced to undergo rigorous imprisonment for one year along with a fine of Rs.2,000/-.

4. Per contra learned counsel for the respondent-accused has vehemently disputed and opposed the prayer made by the counsel opposite and prayed for dismissal of the instant petition. It has been argued that the impugned judgment is a well reasoned one and does not warrant any interference. It has been further contended that as per the allegations levelled in the complaint, which had been filed under Section 138 of the Act, allegedly on 10.02.1999, the respondent-accused had approached the complainant for purchase of gold jewellery and had purchased items worth Rs.56,000/-; she had also borrowed a sum of Rs.1,50,000/- in cash. A civil suit related to the same cheque in question was dismissed by the Civil Court. Furthermore, learned counsel has submitted that the allegations levelled in the complaint were not supported by any evidence

much less any documentary evidence. However, the trial Court had erroneously convicted the respondent-accused based on a presumption under Section 139 of the Act though this presumption under Section 139 of the Act was effectively countered during trial by the respondent-accused. Additionally, the evidence was also adduced during trial that the cheque in question was part of the cheque book, which had been lost and qua whom, a report had also been made to the police by way of a DDR. This fact as per the learned counsel for the respondent-accused had been over-looked by the trial court.

5. Heard learned counsel for the parties and perused the relevant material available on record.

6. As per the allegations levelled in the complaint in question, on 02.08.1998 respondent-accused along with Tajinder Singh approached the complainant to purchase gold jewellery, worth Rs.56,000/-, which was then purchased from his shop. Additionally, on a request made by the respondent-accused Rs.1,50,000/- was also given for the marriage of the sister of the respondent-accused by the complainant. Subsequently, on 17.08.1998, the respondent-accused paid Rs.6000/- in cash and issued a cheque in the sum of Rs.2 lakhs to the complainant. However, on presentation in the bank, the cheque was dishonoured due to the payment being stopped by the drawer. Following this, the complainant issued a legal notice on 27.01.1999 demanding payment, which remained unfulfilled by the respondent-accused. Consequently, the complaint was filed.

7. During trial, the complainant stepped into the witness box as CW-1. He admitted during his cross-examination that neither was he maintaining

records for the gold ornaments that he had been making for sales. However, he claimed to keep a record of the gold stored in his possession in a stock register and sale books of his shop. However, during trial, he failed to produce any such stock register, bill books etc. despite taking adjournments before the trial court. Furthermore, as per the complainant, all the transactions made in his shop had not been documented but were only oral transactions. He did not even place on record any document showing his income tax returns much less for the year 1999 or even the details of the gold, which he had supposedly purchased and which was then used by him for preparing gold ornaments for sale in his shop. Hence, his claim of selling gold ornaments worth Rs.56,000/- and also advancing a loan of Rs.1,50,000/- to the respondent-accused, without any documentation comes across as being highly unnatural and implausible, more so since he was a goldsmith, running a business.

8. As per the allegations, co-accused Tajinder Singh had signed the cheque in question, which had been handed over to him by both the accused, however, it has not been disputed that Tajinder Singh was in no way related or linked to co-accused Sukhwinder Kaur and hence, there was no occasion for the cheque in question to be given to the complainant and that too bearing the signatures of Tajinder Singh.

9. This Court, therefore, concurs with the findings recorded by the learned Appellate Court that the allegations levelled in the FIR and the testimony of the complainant comes across as most untrustworthy. It needs to be emphasized that presumption in evidence under Section 139 of the Act can be rebutted not only by the defence evidence but also through facts revealed during

the cross-examination of a complainant, which in the case in hand is clearly discernible.

10. As a sequel to the above, the present petition being devoid of any merit stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

30.11.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No