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

CRM-A-1658-2019 (O&M)
Decided on : 04.09.2023

Sandeep Kumar ...... Applicant

Versus

Mahavir ...... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Ms. Divya Narula, Advocate for
Mr. Ajay Arora Bharti, Advocate
for the applicant.

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Manjari Nehru Kaul, J.(Oral)

CRM-23326-2019

Application is allowed as prayed for and delay of 118 days in filing the application stands condoned.

Main case

The applicant-complainant(hereinafter referred to as ‘complainant) is impugning the judgment and order dated 29.01.2019 passed by Ld. Judicial Magistrate I Class, Ellenabad wherein respondent-accused (hereinafter referred to as ‘accused) was acquitted of the charges framed against him in a complaint No.104-2/2017, CIS No.NACT/191/2017 under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as ‘the Act’).

2. As per the allegations levelled in the complaint in question, the accused borrowed a sum of Rs.2,90,000/- from the complainant. After repeated requests made by the complainant to the accused to repay the aforementioned loan, the accused issued a cheque bearing No.117792 dated 01.03.2017 for a sum of Rs.2,90,000/- in favour of the complainant. However, on presentation of the said cheque by the complainant, it was returned back vide return memo dated 24.03.2017 with the remarks "Funds Insufficient". The complainant thereafter sent a legal notice dated 05.04.2017 calling upon the accused to make the payment but in vain.

3. The Trial Court on the basis of evidence and other material led, acquitted the accused by holding that the complainant had miserably failed to prove the case against the accused as no evidence much less cogent was led by the complainant to prove the existence of legally enforceable debt whereas the accused, on the other hand, had been able to successfully rebut the presumption under Section 139 of the Act.

4. Learned counsel appearing for the applicant-complainant has reiterated the allegations levelled in the complaint in question by asserting that an amount of Rs.2,90,000/- was borrowed by the accused from him on various dates. Learned counsel has submitted that the Court below had failed to appreciate that once the accused had not disputed his signatures on the cheque in question, therefore, a presumption under Section 118 and 139 of the Act would arise in favour of the cheque-holder, which the

accused had failed to rebut during trial. Learned counsel has vehemently argued that the Trial Court had not appreciated the evidence in the right perspective and also ignored the settled law by drawing an adverse inference against the complainant on the ground that there was no written agreement executed between the parties qua the alleged transaction.

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

6. A perusal of the judgment passed by the Court below reveals that there are material contradictions in the testimony of the complainant viz-a-viz the averments made by him in his complaint. Admittedly, no documentary evidence much less any relevant entries in any account books/*bahi* was produced during trial by the complainant in support of his pleaded case that a sum totaling Rs.2,90,000/- was ever advanced by him. All this needs to be appreciated in the background of the admitted case of the complainant that as and when he loaned some amount of money to persons, he would record the same in his *bahi*. While stepping into witness box as PW-1 the complainant specifically admitted documents Exhibit DA and DB, which are photocopies of writings executed relating to some transactions, which took place between him and the accused. A perusal of Ex.DA reflects that it had been recorded therein that the cheque in question i.e. cheque bearing No.117792 had been handed over to complainant in the year 2015. Hence, in the circumstances, once the cheque had been handed

over to the complainant in the year 2015, there was no question of issuing that very cheque on 01.03.2017. Still further, a perusal of the complaint reveals that no time or date was mentioned as to when the loan had been advanced nor any witness of the alleged transaction between the parties before whom the loan was advanced, was produced. No doubt, the complainant did examine PW-2 Mahender Narayan but the said witness was not an eyewitness. Furthermore, a civil suit was also initiated by the complainant against the accused for recovery of Rs.3,08,000/-. In the suit, the complainant had, on the other hand, claimed to have advanced Rs.1,98,000/- to the accused in the year 2015. In the aforementioned facts and circumstance, it does cast a shadow of doubt on the credibility of the complainant's version.

7. As a sequel to the above, this Court concurs with the observations made by the Court below that the complainant has failed to prove his case while the accused has successfully rebutted the presumption under Section 139 of the Act. Accordingly, the present application stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

04.09.2023
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No