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

**CRM-A-1712-2019
Date of decision : 28.02.2023**

Om Parkash ....Applicant

Versus

Khushi Ram

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ajay Ghangas, Advocate
for the applicant.

MANJARI NEHRU KAUL, J. (ORAL)

The applicant/complainant (hereinafter referred to as complainant) is seeking grant of leave to appeal against the judgment dated 30.03.2019 passed by learned Judicial Magistrate Ist Class, Panipat, vide which his complaint filed under Section 138 of the Negotiable Instruments Act, was dismissed and the respondent-accused (hereinafter referred to as accused) was acquitted of the notice of accusations served upon him.

As per the allegations levelled in the complaint since the complainant was well acquainted with the accused, he advanced a friendly loan of Rs.27 lacs on 28.01.2015, 30.01.2015 and 31.01.2015 to the accused in the presence of one Krishan. The accused in discharge of his legal liability issued three Cheques i.e. Cheque No.000020 dated 10.03.2017, cheque No.000041 dated 01.03.2017 and cheque No.000023 dated 11.01.2017, each for Rs.9 lacs to the complainant which, however, were dishonoured on presentation in the bank and returned vide memo dated 21.02.2017 and 30.03.2017 with the remarks 'insufficient funds'. Thereafter, two notices were sent by the complainant to accused through post Ex.C-8 and Ex.C-10, which the accused refused to receive. Left with no other remedy, the complainant instituted the complaint in question.

Learned counsel for the complainant inter alia submits that the judgment of the trial Court whereby the accused was acquitted was based on a total misreading of the evidence and other material on record. The Court erroneously observed that the complainant and the accused did not have any friendly relations even though no suggestion had been put to the complainant qua the parties being inimical to each other specially when CW-2-Krishan, who had been living with the complainant, had deposed that he had seen the accused in the house of the complainant on a number of occasions. Further, the defence set up by the accused that the cheque in question had been issued as security cheque but later misused by the complainant stood belied from the fact that neither the accused had registered any Criminal Complaint or lodged any FIR qua the same nor approached the bank to stop payment with respect to the cheque in question. Learned counsel still further argued that the accused had not disputed his signatures on the cheque and had also not challenged the financial capacity of the complainant to advance loan of Rs.27 lacs to the accused, hence, the presumption under Section 139 arose in favour of the complainant, which had not been successfully rebutted by the accused.

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

Though the learned counsel for the complainant vehemently argued that the complainant had friendly relations with the accused, however, during his cross-examination, the complainant admitted that neither did he have any business dealings with the accused nor was the accused a resident of his village. It can be clearly inferred from the complainant's own admission that there were no friendly relations between the accused and the complainant, therefore, the testimony of CW-2 Krishan would not carry any weight in the light of the complainant's own admission. Still further, it does not appeal to prudence that the complainant would have advanced a huge sum of money i.e. Rs.27 lacs to the accused without as much as executing any document or receipt qua the same. It is also a matter of record that the loan advanced by the complainant to the accused does not even find reflected in the former's Income Tax Returns. No doubt, the complainant did produce the bank statement of his wife (Ex.C-13) in support of the advancement of the loan in question, however, the Trial Court did not err in observing that those were just self withdrawal entries and could not be considered as cogent evidence qua advancement of the alleged loan to the accused. The presumption under Section 139 of the NI Act, thus, was successfully rebutted by the accused on preponderance of probabilities.

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

Prayer for leave to appeal stands declined.

28.02.2023 **(MANJARI NEHRU KAUL)**
ps-I **JUDGE**

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