IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-A-968-2022 (O&M)
Date of decision: 02.02.2023

Surender .....Applicant/Appellant

Versus

State of Haryana and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Pardeep Panwar, Advocate
for the applicant/appellant.

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MANJARI NEHRU KAUL, J. (ORAL)

The appellant/complainant (hereinafter referred to as 'the complainant') is seeking grant of leave to appeal against the order dated of acquittal 16.04.2022 passed by learned Judicial Magistrate 1st Class, Pehowa.

The allegations levelled in the complaint in question filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') was that the complainant had advanced a friendly loan in the sum of Rs.5,50,000/- to respondent No.2-accused who had promised to repay the same after one month. In order to discharge his legal liability towards the loan, respondent No.2 issued a cheque bearing No.972037 dated 02.06.2018 in the sum of Rs.5,50,000/- drawn at Punjab National Bank of Branch Jind Road, Kaithal, however, when the cheque was presented it was dishonoured and returned with remarks “funds insufficient” vide memo dated 04.06.2018, 06.06.2018 and 12.06.2018. Despite respondent No.2 being requested by the complainant to repay the loan, he failed to do so. The complainant then served a legal notice dated 18.06.2018 upon respondent No.2 but in vain. The complainant averred that the amount of loan advanced to respondent No.2 had in fact been taken by him after raising loan at an interest of 2% per month and thereafter it was advanced to respondent No.2 as an interest free loan. Besides this, it was also urged by the complainant that since respondent No.2 did not dispute his signatures on the cheque in question, a presumption under Section 139 of the NI Act would lie in favour of the complainant that the cheque in question had been issued in discharge of a debt or other legally enforceable liability.

Respondent No.2 on the other hand, sought to throw the case of the complainant out on the ground that it could not be digested that a person would borrow a huge amount of money at an interest of 2% per month and thereafter extend an interest free loan to a third person. It was also submitted that the complainant had led no evidence in support of having obtained a loan at the rate of 2% per month and lastly it was urged by respondent No.2 that since respondent No.2 was a literate person why would he have got the body of the cheque filled up by the brother of the complainant.

I have heard learned counsel and perused the impugned judgment.

This Court does not find any merits in the instant appeal for the reasons to follow.

No doubt, respondent No.2 did not dispute his signatures on the cheque in dispute, however, the initial presumption in favour of the complainant under Section 139 of the NI Act was rebutted by respondent No.2 by alleging that the complainant did not even have the financial capacity to advance the alleged loan. Thereafter, the burden to prove about his financial capacity shifted on the complainant. It does not appeal to prudence that a person would have raised a loan, that too at interest of 2% per month, and thereafter extend an interest free friendly loan to a third person moreso, when it stands reflected on record that the parties did not have any friendly relations. The best witness who could have been examined by the complainant in support of his submissions would have been his employer from whom he had allegedly borrowed the loan money for giving to respondent No.2 or at least led some documentary evidence but admittedly no evidence whatsoever was adduced before the Court below. Still further, it sounds very strange that respondent No.2 who is well versed in both Hindi and English language, and had been signing in English, would leave the cheque in question to be filled up by a third person i.e. the brother of the complainant. The brother of the complainant would have been the best witness to prove the version of the complainant qua respondent No.2 having borrowed the loan from him, however, he was not examined by the complainant for reasons rather strange and best known to him.

This Court, therefore, has no hesitation in holding that the complainant miserably failed to prove that the cheque in question had been issued by respondent No.2 for discharge of any debt or legally enforceable liability.

Dismissed.

Since the main case is dismissed, there is no need to pass separate order on the pending applications, which are disposed of accordingly.

02.02.2023 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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