IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-31-2020 in/and
CRM-A-33-2020 (O&M)
Date of decision: 09.05.2023

Harpal Kaur .....Appellant

Versus

Ranjit Kaur and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Tarun Singla, Advocate for the appellant.

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MANJARI NEHRU KAUL, J. (ORAL)

1. The appellant-complainant (hereinafter referred to as 'the complainant') is impugning the judgment and order dated 23.10.2018 passed by learned Judicial Magistrate, Ludhiana wherein respondent No.1-accused (hereinafter referred to as 'accused') was acquitted of the charges framed against her in a Criminal Complaint No.1362 of 2015 under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act').

2. As per allegations levelled in the complaint, the complainant advanced a friendly loan in the sum of ₹1 lakh to the accused in February, 2015. The accused agreed to repay the loan to the complainant within 06 months. After repeated requests made to the accused, she issued a cheque bearing No.094255 dated 15.05.2015 for a sum of ₹1 lakh in favour of the complainant. On presentation of cheque by the complainant, it was returned vide returned memo dated 22.07.2015 with remarks “Funds Insufficient”. The complainant, thereafter sent a legal notice dated 20.08.2015 calling upon the accused

to make the payment but in vain. The Court below on the basis of the evidence and other material led, acquitted the accused by holding that the complainant had miserably failed to prove her case against the accused as no evidence much less cogent was led by the complainant to show that the complainant being a housewife, had the financial capacity to advance the loan in question and further that the cheque in question had been issued by the accused in favour of the complainant in the discharge of any legal debt or liability.

3. Learned counsel appearing for the appellant-complainant has reiterated the allegations levelled in the complaint in question by asserting that a friendly loan in the sum of ₹1 lakh had been extended to the accused. He has submitted that the learned Trial Court erred in acquitting the accused by taking into consideration only the statement of the complainant who in her cross-examination admitted that she was a housewife and had not been filing her Income Tax Returns. He has submitted that the Court below had failed to appreciate that since the accused had not disputed her signatures on the cheque in question, therefore, a presumption under Section 118 and 139 of the NI Act arose in favour of the cheque holder.

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

5. Admittedly, no documentary evidence was led by the complainant to establish that an amount of ₹1 lakh had been advanced by him to the accused. From a perusal of the impugned judgment as well as the evidence led before the Trial Court, it is apparent that the

husband of the complainant had received payment of ₹1 lakh from the firm of the accused i.e. R.K. Contractor, in the month of April, 2015 vide two cheques dated 15.04.2015, however, the complainant during trial feigned ignorance about the same. In this regard, the accused had examined DW1 Gurcharan Singh, Manager of PNB who produced on record the account statement of R.K. Contractor, a perusal of which revealed that two cheques bearing No.094243 and No.094242 both dated 15.04.2015 in the sum of ₹50,000/- each, in favour of the husband of the complainant from the account of R.K. Contractor had been debited. Undisputedly, the husband of the complainant was an employee of the accused. Thus, it cannot be digested that the accused, being the employer of the husband of the complainant, would have taken a loan from the latter and furthermore, the said loan would have been advanced by the complainant without as much as executing any document in the said regard. During the cross-examination of the complainant, specific questions were put to her qua her income and her financial capacity to advance the loan in question, however, the complainant failed to give any satisfactory explanation in the said regard.

6. As a sequel to the above, this Court concurs with the observations made by the Court below that the complainant being a housewife had failed to prove her financial capacity to advance a loan in the sum of ₹1 lakh. The accused, on the other hand, had successfully rebutted the presumption under Section 139 of the NI Act on preponderance of probabilities having examined as many as 02

witnesses in the said regard.

7. As a sequel to the above, finding no merit the instant leave to appeal is dismissed.

8. Since the main case is dismissed, there is no need to pass any separate order on the application seeking condonation of delay of 288 days in filing the instant leave to appeal, which stands dismissed accordingly.

09.05.2023 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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