IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-A-965-2022
Date of decision: 22.08.2023

Shashi Jain .....Applicant/Appellant

Versus

Hardev Singh .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vaibhav Jain, Advocate for the applicant/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 02.08.2022 passed by learned Judicial Magistrate 1st Class, Batala whereby the respondent-accused (hereinafter referred to as 'the accused) was acquitted of the charges framed against him under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') in Criminal Complaint bearing CIS No.NACT/665/2017 titled as 'Shashi Jain Vs. Hardev Singh' under Section 138 of the NI Act.

2. As per allegations levelled in the complaint in question, the accused borrowed a sum of ₹6 lakhs from the complainant on various occasions upto 29.05.2017, for his domestic needs as well as for payment of a loan qua a truck purchased by him. After being repeatedly requested by the complainant to return the loan, the accused finally issued cheque No.000001 dated 12.10.2017 for a sum of ₹6 lakhs in favour of the complainant. When the cheque was presented by the complainant in the bank, it was returned vide return memo dated

13.10.2017, with the remarks, “Funds Insufficient”. The complainant resultantly sent a legal notice dated 18.10.2017 calling upon the accused to make 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 the case against the accused as no evidence, much less cogent, was led by the complainant to prove the existence of a legally enforceable debt, whereas on the other hand, the accused had been able to successfully rebut the presumption under Section 139 of the NI Act.

3. Learned counsel appearing for the complainant has reiterated the allegations levelled in the complaint in question by asserting that the accused had been borrowing various sums of money totally ₹6 lakhs from the complainant from time to time. The cheque in question, had been issued by the accused in the discharge of his liability to repay the loan. However, the Court below had failed to appreciate that once the accused had not disputed his signatures on the cheque in question, a presumption under Section 118 and 139 of the NI Act had arisen in favour of the cheque holder i.e. the complainant, and still further mere non-production of the Income Tax Returns by the complainant could not have been a sufficient enough ground to rebut the said statutory presumption. While drawing the attention of this Court to the balance sheet (Mark 'A'), learned counsel has further submitted that even otherwise, transaction qua ₹6 lakhs stands reflected in the balance sheet for the assessment year 2019-20 which corroborates the factum of a loan of the like amount having been indeed advanced to the accused. He has lastly submitted that the Trial Court

had even ignored the settled law by drawing an adverse inference against the complainant merely because there was no written agreement executed between the parties qua the alleged transaction.

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

5. It has not been disputed by the learned counsel that there was no documentary evidence much less any written agreement placed on record by the complainant to establish that a sum totalling ₹6 lakhs had been advanced by her to the accused. Furthermore, as per the case of the complainant when the loan was advanced to the accused, it was in the presence of some persons, however, none of the witnesses in whose presence said amount was advanced, stepped into the witness box in support of the case of the complainant.

6. Before proceeding further, it would be relevant to refer to the observations made by the Hon'ble Supreme Court in ***Tedhi Singh Vs. Narayan Dass Mahant : 2022(2) RCR (Criminal) 325***, which read as under:-

> *"...........However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross examination of the witnesses of the complainant. Ultimately, it becomes the duty of the Courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence."*

7. The Hon'ble Supreme Court in ***Basalingappa Vs. Mudibasappa : (2019) 5 SCC 918*** had also held as under:-

> *"23. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:-*
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> *(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.*
>
> *(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.*
>
> *(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely."*

8. During the cross-examination of the complainant, specific questions were put to her qua her income and also her financial capacity to advance the loan in question as the specific case put up by the accused was that the complainant did not have the financial capacity to advance the amount in question. Thus, the burden of proof shifted on the complainant to establish her financial capacity. The complainant, while admitting that she was a homemaker and not engaged in any work, failed to show as to how she had been able to advance the loan in question. The complainant failed to lead any documentary evidence before the Trial Court, to establish her financial capacity. A great deal of reliance was placed by the complainant on one marked document the balance sheet (Mark 'A') to prove her financial capacity to advance a loan in the sum of ₹6 lakhs, however, it could not come to her rescue as

it pertained to the year assessment year 2019-20 whereas the loan amount was advanced on 29.05.2017. The complainant, thus, miserably failed to prove her financial capacity to lend such a huge sum of money to the accused.

9. As a sequel to the above, this Court concurs with the findings recorded by the Court below that the accused had successfully rebutted the presumption under Section 139 of the NI Act.

10. Accordingly, finding no merit in the instant leave to appeal the same is hereby dismissed.

22.08.2023 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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