

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

CRM-A-164-2020

Date of decision : 01.03.2023

M/s Dasmesh Khad Store

....Applicant

Versus

Baldev Singh

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Kanwal Goyal, Advocate
for the applicant.

MANJARI NEHRU KAUL, J. (ORAL)

The complainant/applicant is impugning the judgment dated 23.10.2019, vide which the learned trial Court acquitted the respondent-accused (hereinafter referred to as accused) for commission of offence under Section 138 of the Negotiable Instruments Act.

The complaint in question was filed by M/s Dasmesh Khad Store through its proprietor Sukhdev Singh (since deceased). As per the allegations levelled in the complaint, accused had been purchasing fertilizers from the complainant firm and had been making payment in 'running transaction'. A sum of Rs.2,80,000/- was due towards the accused in the course of their business transaction. Accused issued a cheque No.018211 for Rs.2,80,000/- which was dishonoured by the bank on presentation vide memo dated 06.03.2013 with the remarks "funds insufficient". Thereafter, the complainant served legal notice upon the accused on 16.03.2013, however, the accused failed to pay the amount in

question. Hence, the present complaint was instituted by the complainant.

Learned counsel for the applicant/appellant argues that the trial Court gravely erred in holding that the contents of the complaint in question and the evidence led by the complainant/applicant before the trial Court were at variance with each other and there were material improvements made by the complainant. He submits that the factum of advancing an amount of Rs.2 lacs through cheque dated 22.10.2008, stood proved during the evidence of CW-1- Anish Kumar, Clerk, State Bank of Patiala. He, thus submitted that once the advancement of loan stood proved and the signatures on the cheque in question also was not disputed by the accused, presumption under sections 118 and 139 of the NI Act, would arise in favour of the complainant that the cheque had been issued by the accused in discharge of a legal debt/liability.

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

A perusal of the impugned judgment as well as the material on record clearly reveals that the complainant had indeed made material improvements before the trial Court. While in the complaint it was alleged by the complainant that amount of Rs.2,80,000/- was due from the accused in lieu of fertilizers purchased by him from the complainant-firm, for which the cheque had been issued in discharge of the aforesaid liability, however, while stepping into the witness box and during the examination of CW-I Anish Kumar, Clerk, State Bank of Patiala, the complainant came up with an altogether different story that an amount of Rs.2 lacs had been advanced by him to the accused, as loan by way of a

cheque. Strangely and admittedly in the complaint, there was no mention qua the above said fact. Thus, it is evident that the complainant had come up with self contradictory versions not only regarding the amount involved but also the reason for advancing the amount in question. The presumption under Section 139 of the Act, thus, was successfully rebutted by the accused, on the preponderance of probabilities. From the material on record, it is apparent that the complainant has failed to establish that the cheque in question was issued by the accused in discharge of a legally enforceable debt/liability.

In the wake of the above discussion, this Court finds no infirmity much less illegality in the impugned judgment.

Prayer for leave to appeal declined.

01.03.2023
ps-I

(MANJARI NEHRU KAUL)
JUDGE

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