2024:PHHC:102682

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

232 **CRM-A-443 of 2019 (O&M)**
Date of Decision: 31.07.2024

Rishi Pal ...Applicant

Versus

Gaje Singh ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Sukhdeep Singh, Advocate, for the applicant.

N.S.SHEKHAWAT, J. (Oral)

1. The applicant has filed the present application under Section 378(4) Cr.P.C. with a prayer to grant special leave to appeal against the impugned judgment dated 03.01.2019 passed by the Court of Judicial Magistrate 1st Class, Karnal, whereby, the respondent has been acquitted of the notice of accusation under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**').

2. The complaint under Section 138 of the Act was filed by the applicant/complainant against the respondent/accused on the ground that Suresh, brother of respondent used to come to saw mill of brother of Rakesh, friend of the applicant. The applicant was present

at the saw mill of Rakesh and after buying the firewood, Suresh Kumar introduced himself as an employee of the Court of Judicial Magistrate 1st Class, Karnal. He further told that his brother Gaje Singh, respondent, is a personal assistant of Hooda and he could get them jobs in Haryana Urban Development Authority (hereinafter to be referred as 'the HUDA'). Thereafter, Suresh Kumar demanded a sum of Rs. 8,00,000/- from them for the said purpose and finally the matter was settled for Rs. 7,30,000/-. Initially an amount of Rs. 4,00,000/- was paid and the remaining amount of Rs. 3,30,000/- shall be paid after receiving the joining letter. The applicant paid an amount of Rs. 4,00,000/- to the accused in the presence of Omnath, Rajpal and Ramesh. The applicant and Rakesh gave a sum of Rs. 7,30,000/- to the respondent/accused. After receiving Rs.4,00,000/-, the respondent had issued appointment letters to them and got them medically examined and, thus, remaining amount was also paid to the respondent. The respondent also assured that the applicant and his friend would get the joining letter soon, but waiting for sufficient time, they did not get the same. Thereafter, the matter was inquired from the HUDA and the applicant came to know that forged appointment letters had been issued to them. Thus, on the basis of forged and fabricated documents, the respondent had taken an amount of Rs. 7,30,000/- from the complainant and his friend Rakesh Kumar. Thereafter, a Panchayat was convened and in the presence of Panchayat, the respondent admitted his guilt and issued three cheques bearing numbers 477021, 477022, 477023, dated 15.06.2012, 30.08.2012 and 21.08.2012 for a sum of Rs.2,00,000/-, 2,50,000/- and Rs. 2,80,000/-, in favour of applicant and Rakesh Kumar. On the assurance of the respondent, the applicant presented cheque bearing No. 477022 dated 30.08.2012 with his banker, i.e., Oriental Bank of Commerce, G.T. Road, Karnal, however, the said cheque was dishonoured by the bank vide bank memo dated 30.08.2012 with the remarks “funds insufficient”. Thereafter, a legal notice was issued by the applicant to the accused/respondent calling upon him to make the requisite payment within 15 days, but the respondent failed to make the said payment and the applicant was constrained to file the present complaint.

3. After summoning of the respondent, the notice of accusation under Section 138 of the Act was served upon the respondent, to which, he pleaded not guilty and claimed trial. During the course of trial, the applicant examined himself as CW1 and also tendered the following documents:-

1.	Ex.C1	Original cheque
2.	Ex.C2	Return Memo
3.	Ex.C3	Legal Notice
4.	Ex.C4 to Ex.C7	Postal receipts and acknowledgment
5.	Ex.C8	Complaint moved to SP Karnal by complainant
6.	Ex.C9 to Ex.C11	Registered envelopes and acknowledgment
7.	Mark-A and Mark-B	Appointment letters given by accused
8.	Mark C	Affidavit dated 21.05.2012

The applicant further submitted documents Ex.CA to Ex.CT and closed evidence.

4. After the closer of the prosecution evidence, the statement of respondent was recorded under Section 313 Cr.P.C. and he had pleaded his false implication in the present case. Learned trial Court after hearing both the parties passed the impugned judgment whereby respondent was ordered to be acquitted. Hence, the present application under Section 378(4) has been filed.

5. Learned counsel for the applicant vehemently submits that in the present case, there was sufficient evidence to show that an amount of Rs. 7,30,000/- was given by the applicant and his friend Rakesh Kumar to the respondent. Even, the respondent had factually admitted his guilt and had issued cheques against the outstanding amount. Even, there was no dispute with regard to the issuance of the cheques and the ingredients of the offence under Section 138 of the Act were complete. Thus, the impugned judgment is legally unsustainable.

6. I have heard learned counsel for the applicant and have perused the case file carefully with his assistance.

7. It is admitted case of the applicant that an amount of Rs.7,30,000/- was paid by the applicant and his friend to the respondent as respondent wanted to provide government jobs to them illegally. However, when the joining letters were not issued to them, the respondent had to return the amount of Rs. 7,30,000/- by way of

cheques, which were dishonoured and are the subject matter of the present complaint.

8. To prove the offence under Section 138 of the Act, the following ingredients are required to be fulfilled:-

> *(i) A person must has drawn a cheque on an account maintained by her/him in a bank for payment of a certain amount of money to another person from out of that account.*
>
> *(ii) The cheque should have been issued for the discharge, in whole or in part, of any debt of other liability.*
>
> *(iii) That cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.*
>
> *(iv) That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement within the Bank.*
>
> *(v) The payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him/her from the bank regarding the return of the cheque as unpaid.*
>
> *(vi) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.*

> ***Explanation: For the purpose of this Section, "debt or other liability" means a legally enforceable debt or other liability.)"***

9. From the above, it is apparent that for proving the ingredients of the offence under Section 138 of the Act, it is mandatory that the cheque should have been issued by a person for the discharge, in whole or in part of any debt or the liability. Further, Section 23 of the Indian Contract Act provides for what consideration and objects are lawful. It clearly provides that consideration or object of an agreement is lawful, unless, (a) it is forbidden by law; or (b) is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards, it as immoral, or proposed to public policy. In each of these cases, the consideration or object by an agreement is stated to be unlawful. Each agreement of which the object or consideration is unlawful is void.

10. Thus, from the above provisions of law, it is apparent that in the present case, the money was paid by the applicant to the respondent for securing a job in the HUDA illegally. Consequently, it can be very well said that the liability was not a legally enforceable liability. I agree with the findings recorded by the trial Court that only a claim arising out of an enforceable debt or other liability will constitute an offence under Section 138 of the Act. Thus, keeping in view the provisions of Section 23 of the Indian Contract Act, the

agreement between the applicant and respondent was void as consideration of Rs. 7,30,000/- was in the nature of illegal gratification and unlawful and the cheque amount was not recoverable through the process of law.

11. Thus, the complaint has been rightly dismissed by the trial Court.

12. As a sequel to above discussion, I find no grounds to interfere with the detailed findings recorded by the trial Court and the impugned judgment dated 03.01.2019 passed by the Judicial Magistrate 1st Class, Karnal, is ordered to be upheld and the application for special leave to appeal is ordered to be dismissed.

13. Pending applications, if any, are also disposed off, accordingly.

31.07.2024 **(N.S.SHEKHAWAT)**
amit rana **JUDGE**

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