2024:PHHC:126663

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-A-1731-MA-2018
Date of decision: September 20th, 2024

Shree Ram Oil Field

.....Applicant

Versus

Devender Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ketan Antil, Advocate
for the applicant.

MANJARI NEHRU KAUL, J.

The applicant (hereinafter referred to as 'complainant') is challenging the judgment dated 12.06.2018 passed by learned JMIC, Sonipat, whereby the respondent-accused (hereinafter referred to as 'accused') was acquitted of charges under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act').

2. According to the allegations levelled in the complaint, the accused regularly purchased diesel from the complainant, accruing a liability of ₹3,25,000/-. To discharge his liability, the accused issued a cheque No.176486 dated 16.11.2013 for ₹3 lakhs, drawn on ICICI Bank, Sonipat. However, when the cheque was presented for encashment, it was dishonored on 07.02.2014 with the remarks 'funds insufficient'. Following this, the complainant sent a legal notice on 15.06.2016 to the accused, demanding payment, but the accused failed to comply. Subsequently, the criminal complaint in question was filed on 29.04.2014. The trial Court on the basis of the evidence led by

the parties, acquitted the accused, holding that the complainant had failed to prove his case beyond reasonable doubt. The Court observed that the complainant did not adduce any evidence, let alone cogent, to prove that the cheque was issued by the accused in discharge of a legal debt or liability. Furthermore, the trial Court also noted the failure of the complainant to produce the requisite and essential records, such as the ledger account, from which an adverse inference was drawn against him. The trial Court concluded that the complainant had not approached the Court with clean hands and had withheld material facts. Resultantly, the accused was acquitted. Aggrieved, the complainant has filed the instant application.

3. Learned counsel for the complainant has reiterated the allegations made in the complaint, emphasizing that the accused owed him ₹3,25,000/- for purchase of diesel from him. Learned counsel has argued that the trial Court erred in not appreciating that the accused had not disputed his signatures on the cheque. Furthermore, the accused had raised a false defence, claiming that the cheque was issued as security and had been misused by the complainant; the accused had failed to substantiate his defence of false implication by way of any cogent evidence.

4. Learned counsel for the complainant further argued that the accused never asked for the return of the cheque if it was indeed a security, nor did he provide any evidence to show that the complainant refused to return this cheque. Learned counsel submitted that the trial Court failed to properly consider that the accused had not rebutted the

statutory presumption under Section 139 of the Act. Additionally, learned counsel asserted that the trial Court wrongly drew an adverse presumption against the complainant for not producing the ledger accounts, despite the fact that the purchases made by the accused worth ₹3,23,426/- were conclusively proved since the complainant had submitted his income tax returns, which also reflected the outstanding amount owed by the accused.

5. I have heard learned counsel for the applicant and perused the relevant material on record.

6. In the instant case, there is no direct documentary evidence presented by the complainant to prove that ₹3,25,000/- was due from the accused. A perusal of the receipts Exhibits D-2 to D-4 reflect that the accused made payments of ₹10,000 on 27.01.2014 and ₹70,070/- on 18.05.2013. Additionally, ₹40,000/- was paid on 20.11.2013, just four days after the issuance of the cheque in question, yet this amount was not deducted when the cheque was presented for payment.

7. During the course of trial, the complainant requested the Court for an adjournment during cross-examination to produce the ledger account and his bank statements but failed to do so. This failure casts serious doubt on the case of the complainant. It is indeed surprising that essential records, such as the ledger account and account statements, which could have provided the best evidence in support of the claim of the complainant, were not produced by him for reasons best known.

8. Moreover, the arguments raised by the learned counsel for the complainant that the amount owed by the accused was reflected under 'sundry creditors' in the income tax returns, does not carry any weight, as no specific reference to the accused is made in those returns. This Court, therefore, concurs with the observation of the learned trial Court that had any amount been indeed due from the accused, it would have been explicitly reflected in the income tax returns. Therefore, the trial Court rightly drew an adverse presumption against the complainant for not coming to the Court with clean hands.

9. As a sequel to the above, no ground is made out, which would warrant interference with the impugned order as the complainant has miserably failed to prove that the cheque in question was issued for a valid consideration for discharging a legally enforceable debt.

10. The instant application stands dismissed.

September 20th, 2024 **(MANJARI NEHRU KAUL)**
Puneet **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No