2024:PHHC:159673

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

355

CRM-A-1184-MA-2017
Date of decision: November 25th, 2024

Satish Kumar

.....Applicant

Versus

Satvir Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Susheel Gautam, Advocate
for the applicant.

Mr. Arun Singhal, Advocate
for the respondent.

MANJARI NEHRU KAUL, J.

The applicant/complainant (hereinafter referred to as 'complainant') has challenged the judgment dated 09.03.2017 passed by learned JMIC, Panipat, whereby respondent-accused (hereinafter referred to as 'accused') was acquitted of the notice of accusation served upon him under Section 138 of The Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. Before proceeding further, the sequence of events leading to the present petition may be noticed as thus:

(i) The complainant filed a criminal complaint alleging that the accused, with whom he shared cordial relations, had borrowed a friendly loan of ₹5,80,000/- in December 2013, promising to repay the same within six months. Upon defaulting on repayment, the accused issued a cheque bearing No.361156 dated 25.06.2014 for ₹5,80,000/-, drawn at ICICI Bank, G.T. Road, Panipat. When presented for encashment, the cheque was returned unpaid on 02.07.2014 with the remarks "Insufficient Funds". Despite the issuance of a legal notice dated 10.07.2014 demanding payment, the accused failed to comply, leading to the filing of the complaint in question.

(ii) The learned trial Court, after examining the evidence and other material on record, acquitted the accused, holding that the complainant had failed to substantiate his case against the accused. The learned trial Court, while passing the impugned judgment, held that the complainant had not produced any cogent evidence to demonstrate that the cheque was issued by the accused in discharge of any legally enforceable debt or liability; the complainant failed to prove the alleged lending of ₹5,80,000/- or prove his financial capacity to extend such a substantial amount; there was documentary evidence, such as bank statements, salary records, or corroboration from witnesses, to support the claim of the complainant of lending the amount in question to the accused.

3. Learned counsel for the complainant has reiterated the allegations levelled in the criminal complaint in question, asserting that the accused had taken a friendly loan and issued the cheque in question for its repayment. Learned counsel has argued that once the accused admitted to signing the cheque, a presumption under Section 139 of the Act arose in favour of the complainant. Still further, he has contended that the trial Court failed to appreciate that the accused did not effectively rebut this presumption with credible evidence. Furthermore, learned counsel has argued that the trial Court erred in emphasizing upon the inability of the complainant to prove his financial capacity to lend such an exorbitant amount.

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

5. Upon meticulous examination of the material on record including the impugned judgment, this Court does not find any merit in the submissions made by the counsel for the complainant for the reasons to follow:

(i) While the complainant alleged that the accused borrowed ₹5,80,000/- and issued cheque Exhibit C1 to discharge the debt, he failed to provide cogent much less sufficient evidence to support his claims.

(ii) During cross-examination, the complainant admitted to drawing a monthly salary of ₹9,000/- only but did not produce any documentary evidence of his income or savings. Although, he claimed to have ₹2-2.5 lakh in cash and further stated that he had borrowed ₹80,000/- from one Pawan and ₹2.5 lakh from one Raj Singh, neither of these individuals, strangely were examined as witnesses by the complainant. Both these witnesses could have been the best witnesses to support the case of the complainant.

(iii) The complainant did not produce any documentary evidence much less in the shape of his bank account statements, passbook etc. to substantiate his funding capacity to lend such an exorbitant sum of money.

(iv) Strangely, the complainant also failed to specify when and in whose presence, the money was handed over to the accused. Even though such a huge and exorbitant sum of money was lent to the accused, strangely there was no written acknowledgment or receipt, which further weakened the claim made by the complainant.

(v) Section 138 of the Act mandates that the dishonoured cheque must have been issued in discharge of a legally enforceable debt or liability. Although Section 139 of the Act provides a presumption in favour of the complainant, this presumption does not extend to the legality of the underlying debt. The burden to prove the enforceability of the debt still lies with the complainant, which he failed to discharge in the present case.

6. In the light of the foregoing, this Court has no hesitation to concur with the findings of the learned trial Court that the complainant failed to prove that the cheque in question was issued in discharge of a legally enforceable debt or liability. The absence of any credible evidence regarding the alleged loan and the funding capacity of the complainant further renders his claim untenable under Section 138 of the Act.

7. As a sequel to the above, the instant application stands dismissed.

November 25th, 2024 **(MANJARI NEHRU KAUL)**
Puneet **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes