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

CRM-A-2380-MA-2016(O&M)
Decided on : 24.09.2024

Sandeep Walia ...... Applicant

Versus

State of Haryana and another ...... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sanjiv Gupta, Advocate with
Mr. Aaywn Bansal, Advocate
for the applicant..

Mr. Gagandeep Singh Chhina, AAG, Haryana.

None for respondent No.2.

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Manjari Nehru Kaul, J.(Oral)

CRM-41087-2016

Application is allowed as prayed for and delay of 24 days in filing the application is condoned.

Main case

Instant application has been filed by the applicant under Section 378(4) Cr.PC challenging the judgement dated 29.07.2016 passed by learned Judicial Magistrate, Ist Class, Sirsa vide which the accused was acquitted of the charges in a criminal complaint filed under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'the Act').

2. According to the allegations set forth in the complaint, the accused and the complainant shared a friendly relationship, during which the accused approached the complainant to seek a credit facility of Rs. 48,000/- promising to repay the sum. In discharge of this liability, the accused issued Cheque No.010172 dated 27.02.2014 for Rs. 48,000/-, drawn on the Central Bank, Sirsa Branch. However, when the cheque was presented for encashment, it was dishonoured on 01.03.2014 with remarks "funds insufficient." Following the dishonour, the complainant issued a legal notice to the accused on 06.03.2014, demanding repayment of the amount, but the accused failed to comply. Consequently, the complainant filed the criminal complaint in question.

3. During the trial, based on the evidence presented by both parties, the Trial Court acquitted the accused, holding that the complainant failed to prove his case beyond a reasonable doubt. The Court observed that the complainant did not produce any cogent evidence to prove that the cheque was issued by the accused in discharge of any legal debt or liability. As a result, the accused was acquitted of the charges. Aggrieved by the acquittal, the complainant has now filed the instant appeal.

4. Learned counsel for the applicant (hereinafter referred to as “complainant”) has reiterated the allegations made in the complaint asserting that the accused had borrowed a sum of Rs. 48,000/- based on their friendly relationship. Learned counsel has argued that the Trial Court erred in acquitting the accused by failing to consider that the

accused did not rebut the statutory presumption under Section 139 of the Act, and that no credible evidence was led by the accused to support his defense. Furthermore, learned counsel has submitted that the defense raised by the accused, claiming that the cheque was issued as security to one Inderjeet and subsequently misused by the complainant, was false. Learned counsel also pointed out that the accused had not denied his signatures on the cheque, which further supported the case of the complainant.

5. Additionally, learned counsel has argued that if the cheque was indeed issued as a security, the accused strangely never demanded its return, nor did he provide any evidence to show that the complainant had refused to return the cheque. The ld counsel has further submitted that the trial court specifically noted that the complainant had proved the execution of the cheque, yet dismissed the case on the grounds that the complainant failed to prove the existence of a legally enforceable debt.

6. Heard learned counsel for the applicant and perused the relevant material available on record.

7. After hearing the submissions, this Court finds that there is no documentary evidence, such as account statements or loan documents, placed on record by the complainant to establish the existence of a legally enforceable debt between the parties. Furthermore, there were no witnesses to the transaction, nor any evidence that the complainant had withdrawn the said amount from any

of his bank accounts. Furthermore, the amount in question already stands repaid to one, Inderjeet with whom accused had actual dealings. Notably, the date on which the loan was allegedly advanced is not mentioned anywhere in the complaint. During cross-examination, Baljeet Singh (CW-1), the Special Power of Attorney for the complainant, admitted that the complainant did not have a cordial relationship with the accused, contrary to the claims made in the complaint.

8. The essential elements required to establish an offence under Section 138 of the Negotiable Instruments Act are clearly missing in this case. This Court therefore agrees with the observations of the trial court that the accused was not under any legal obligation to honour the cheque, and that he successfully rebutted the presumption under Section 139 of the Act.

9. As a sequel to the above, no ground is made out that would warrant interference within the impugned order. The complainant has failed to prove that the cheque in question was issued for valid consideration and in discharge of a legally enforceable debt. Accordingly, the present appeal stands dismissed.

24.09.2024 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

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