

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on:15.02.2024
Pronounced on: 20.02.2024

1.

CRM-A-276-MA-2017

Tajinder Kaur

.....Applicant
- Vs.

Inderpal Singh @ Vicky

.....Respondent
2.

CRM-A-318-MA-2017

Paramjit Singh

.....Applicant
- Vs.

Inderpal Singh @ Vicky

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By:-Mr. Deepak Arora, Advocate for the applicants.

Mr. Keshav Chadha, Advocate for Mr. Rahul Bhargava,
Advocate for the respondent.

DEEPAK GUPTA, J.

This order shall dispose of the above titled two applications, both moved under Section 378(4) Cr.P.C, seeking special leave to appeal against the two judgments both dated 03.12.2016 in similar circumstances.

2. Paper books along with trial Court record of both the cases have been perused. In order to avoid confusion, the parties shall be referred as per their status before the trial Court.

3. It is revealed that Shri Paramjit Singh (*applicant in CRA-318-MA-2017/* complainant in criminal complaint N: 1089 of 2013 titled

“Paramjit Singh Vs. Inderpal Singh @ Vicky”), is the husband; whereas Smt. Tajinder Kaur (*applicant in CRA-276-MA-2017/* complainant in criminal complaint N: 1090 of 2013 titled “*Tajinder Kaur Vs. Inderpal Singh @ Vicky*”, is his wife. Said husband and wife i.e. Paramjit Singh and Tejinder Kaur filed two separate complaints against the same accused Inderpal Singh (*respondent herein*) seeking his prosecution under Section 138 of the Negotiable Instruments Act. The wife- Tajinder Kaur filed the complaint through her attorney – her husband Paramjit Singh.

3. In the complaint filed by husband Paramjit Singh, it was alleged that friendly loan was taken by the accused Inderpal Singh in December, 2012, payable on demand and that in order to discharge the liability, accused issued Cheque No.144736 dated 01.06.2013 for an amount of ₹1 lakh drawn in HDFC Bank, Ludhiana. On presentation, the cheque was dishonored vide Return Memo dated 03.06.2013 with remarks “Insufficient Funds”. Legal notice dated 06.06.2013 was sent through registered post dispatched on 13.04.2013, which the accused refused to accept on 17.06.2013. With these allegations, complaint was filed on 05.07.2013 to prosecute the accused.

4. The wife – Tajinder Kaur through her attorney – husband Paramjit Singh filed the complaint by alleging that accused had raised friendly loan from her in December, 2012, repayable on demand; and that to discharge the liability, accused issued following three cheques:-

S. No.	Cheque Number	Dated	Amount	Drawn On
(i)	141496	01.06.2013	₹50,000/-	State Bank of Patiala
(ii)	141497	01.06.2013	₹50,000/-	State Bank of Patiala
(iii)	144737	01.06.2013	₹50,000/-	HDFC Bank

All the three cheques as above, were dishonored on presentation, vide separate Return Memos dated 03.06.2013. Legal notice dated 06.06.2013 was sent to the accused, which he refused to accept. Complaint was then filed on the same date, i.e. 05.07.2013.

5. In both the cases, after recording preliminary evidence, process against the accused Inderpal Singh was issued. Upon his appearance, notices of accusation under Section 138 of the Negotiable Instruments Act were issued in both the cases on the same date i.e. 04.12.2013, to which he pleaded not guilty and claimed trial.

6. In both the cases, same set of evidence has been adduced. Complainant Paramjit Singh examined himself as CW1 in his own case and as attorney of his wife – Tajinder Kaur also as CW1 in the complaint filed by his wife and then closed the evidence.

7. Statement of the accused under Section 313 Cr.P.C was recorded on the same date i.e on 14.12.2015 in both the cases, in which the stand taken by the accused is that in fact, he was a tenant on a shop belonging to the complainant – Paramjit Singh, adjoining to his *Aata Chakki*. Complainant started using the tenanted shop of the accused as his drinking place. As accused was running a Ladies Boutique in the shop, the ladies were reluctant to come to his shop and so, he forbade the complainant to use his tenanted shop as drinking place. Because of this grudge, the complainant used the security cheques given to him for the purpose of rent, by filing these frivolous complaints by himself and through his wife. He specifically stated that he had handed over blank signed cheques to the complainant as security with regard to the tenanted shop owned by the

complainant.

8.1 To prove his defence, accused examined his father Ajit Singh as DW1, who testified that shop of the complainant, adjoining to his Atta Chakki, was on rent with his son Inderpal Singh, which was used by him during 2012 to 2014 and that the tenanted shop was being used by Inderpal for selling ready-made garments.

8.2 DW2 Rajinder Kumar, supporting the case of the accused testified that he along with his wife Sonia used to purchase ladies garments from the shop of the accused during 2012-2013 and that shop was owned by Paramjit Singh and under the tenancy of Inderpal Singh. He also disclosed the Shop Number to be 194-195, Field Ganj, Main Market, Ludhiana.

8.3 Accused Inderpal Singh himself entered the Witness Box as DW3 and testified in support of the stand as taken by him in his statement under Section 313 Cr.P.C. He disclosed that he had taken the shop on rent in 2012 and used to pay rent during 15th to 20th of every month. He also disclosed that rate of rent was ₹20,000/- per month and that he paid rent by way of cheques for four months in 2012 and also paid fifth cheque of ₹43,700/-. However, he admitted that he never demanded any receipt. He also deposed the shop number of the tenanted shop as 194-195. He also deposed that tenancy was oral and denied the suggestion that he was never the tenant.

8.4 DW4 Rakesh Kumar Sethi is an official of State Bank of Patiala, D.D. Jain College Branch, Ludhiana, who produced the summoned record pertaining to account holder Inderpal Singh- accused. He proved the entries of the following cheques, which were received for clearing from the account of the

accused:-

S. No.	Cheque No.	Dated	Amount (₹)
(i)	141498	20.06.2012	20,000/-
(ii)	141499	19.07.2012	20,000/-
(iii)	141500	17.08.2012	20,000/-
(iv)	340502	18.09.2012	43,712/-
(v)	381800	17.12.2012	20,000/-

DW4 testified that these cheques were cleared from the account of the accused Inderpal Singh and normally sent for clearing in Central Clearing Processing Cell of the Bank for paying to the Bank of the concerned payee.

8.5 DW5 Vipin Kumar Kataria is an Officer in the Punjab & Sind Bank Gurudwara Kalgidhar, Ludhiana, who brought the record pertaining to the account of the complainant- Paramjit Singh maintained in their Bank and proved the entry dated 17.08.2012 regarding credit of ₹20,000/- by way of Cheque No.141500 of State Bank of Patiala. He proved the Statement of Accounts Ex.DW5/A in this regard.

9. After appraising the entire evidence on record and hearing both the sides, learned trial Court recorded the acquittal in both the complaint cases by way of the impugned judgments, both dated 03.12.2016.

10. Seeking leave to appeal by way of the present applications, it is contended by learned counsel that accused never disputed his signatures on the cheques in question and, therefore, there was presumption of legal enforceable debt/ liability under Section 139 of the Negotiable Instruments Act in favour of the complainant, which was required to be rebutted by the accused but he failed to do so. Learned counsel further contends that the trial Court wrongly came to conclusion that the cheques were not meant to discharge the legally enforceable

debt or rather the same had been misused by the complainant. Prayer is made for setting aside the impugned judgments and to convict the accused- respondent in both the cases by allowing the applications for leave to appeal.

11. Learned counsel for the respondents defended the impugned judgments to be well reasoned and prayed for dismissal of the applications.

12. I have considered submissions of both the sides and have appraised the record carefully.

13. There are numerous circumstances, emerging in the evidence produced on record, which falsify the case of the complainant- applicant.

14. No doubt, once signatures on the cheques in dispute are admitted, there is presumption in favour of complainant under Section 139 of the Negotiable Instruments Act but it is the settled proposition of law that the said presumption is rebuttable. In order to rebut the presumption, accused can adduce his own evidence, or can elicit the circumstances favourable to him in the cross-examination of complainant or his/her witnesses or can take the stand in his statement under Section 313 Cr.P.C., to be corroborated by other evidence. However, the standard of proof required for rebutting the presumption by the accused is not of beyond reasonable doubt. Rather, accused is required to convince the Court that the defence pleaded by him is probable.

15. In the present case, in the first place, it is important to notice that in both the complaints, it is pleaded that friendly loan was taken by the accused from both the complainants i.e. Paramjit Singh and his wife Tajinder Kaur in December, 2012, without specifying the date, when the loan was taken and not even specifying as to what amount of loan was taken as friendly loan. No writing

was executed. As per the testimony of CW1 Paramjit Singh, appearing for himself in his own complaint and as an attorney of his wife in the complaint filed by his wife – Tajinder Kaur, the alleged loans were taken by the accused on the same date. As per him, he advanced the loan in the morning, whereas his wife gave the loan in the evening but without his knowledge or consent. He also says that no other person was present at the time of lending the amount to the accused – Inderpal Singh.

16. The afore-said statement in itself creates doubt about the truthfulness of the story put forth by the complainant. Further dent is caused in the said story when CW1 Paramjit Singh disclosed that income of his wife is only ₹7,000/- to ₹8,000/- per month. He also says that he has no independent income and he obtains money for expenses from his son. He further says that his wife's earning is by sewing ladies suits and that she lives hand to mouth.

17. In the afore-said circumstances, when complainant – Paramjit Singh has no source of income and is dependent upon the money received from his son; whereas his wife, another complainant – Tajinder Kaur lives hand to mouth by earning ₹7,000/- to ₹8,000/- per month, it is hard to digest that the complainants, will lend an amount of ₹2,50,000/- (total amount of the four cheques) to the accused on a single day in December, 2012, as is stated by the complainant, without even disclosing the exact date of lending the amount.

18. Moving further, the testimony of accused Inderpal Singh examined as DW3 duly supported by DW1 Ajit Singh and that of DW2 Rajinder Kumar proves that in fact accused Inderpal Singh was a tenant on a shop owned by complainant Paramjit Singh, bearing No.194-195, Field Ganj, Main Market, Ludhiana, which

was adjoining to the *Aata Chakki* of the complainant. The fact that said address i.e. 194-195, Field Ganj, Main Market, Ludhiana is that of complainant is proved by the testimony of DW5 Vipin Kumar Kataria, who has produced the account statement of the complainant Paramjit Singh bearing the same address.

19. The testimony of accused to the effect that he was tenant under the complainant Paramjit Singh @ ₹20,000/- per month is further corroborated by the fact that he had paid rent @ ₹20,000/- per month during June, July, August and December, 2012 by way of Cheques Nos.141498 dated 20.06.2012, 141499 dated 19.07.2012, 141500 dated 17.08.2012 and 381800 dated 17.12.2012 respectively and paid another amount of ₹43,712/- by way of cheque No.340502 dated 18.09.2012, all drawn on State Bank of Patiala. The credit of an amount of ₹20,000/- in the account of complainant Paramjit Singh is proved by the statement of DW5 Vipin Kumar Kataria, the Officer of Punjab and Sind Bank, where the complainant is maintaining his account.

20. It is also important to notice that two of the cheques bearing Nos.141496 and 141497, are the subject matter of complaint filed by Tajinder Kaur and these are of the same series, by which accused had paid rent for the months of June, July and August, 2012 @ ₹20,000/- per month.

21. Apart from above, it is very interesting to notice that accused Inderpal Singh is alleged to have issued three cheques of ₹50,000/- each in favour of complainant Tajinder Kaur, all of the same date, i.e. 01.06.2013. Learned counsel for the applicants is unable to convince this Court that if all the three cheques were of the same date, i.e. 01.06.2013, why a single cheque for ₹1,50,000/- could not have been issued.

22. All the afore-said circumstances taken together, clearly indicate that in fact, the four cheques in question (three cheques forming subject matter of the complaint filed by Tajinder Kaur and one cheque forming subject matter of complaint filed by Paramjit Kaur) were the security cheques given by the accused to Paramjit Singh, so as to secure his rent and that as the relations between the two parties became strained, complainant misused the security cheques, despite there being no legally enforceable liability. The defence pleaded by the accused in this regard is highly probable.

23. Consequent to the afore-said discussion, it is held that the trial Court did not commit any error in recording acquittal of the accused in both the cases. This Court does not find any substance in any of the applications so as to call for any inference in the impugned judgments of acquittal. As such, both the applications seeking leave to appeal are hereby dismissed.

A photocopy of this order be placed on the file of connected case.

February 20, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No