221 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-952-MA-2017
Date of Decision:28.08.2024

Jagbir Singh …Appellant

Vs.

Shama Soni …Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Kunal Vinayak, Advocate
for the applicant-appellant.

Ms.Simrat Kaur, Advocate
for the respondent.

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<u>N.S.Shekhawat J.</u>

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 25.01.2017, passed by the Court of Judicial Magistrate, Ist Class, Amritsar, whereby the respondent was ordered to be acquitted of the charge under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "Act").

2. The brief facts of the case are that the applicant/complainant had filed a complaint under Section 138 of the "Act" against the respondent by alleging that the respondent and her husband Naresh Kumar were having friendly relations with the applicant. The respondent and her husband approached the applicant in the month of October,2013 and loan of Rs.5,00,000/- was given by the applicant to the respondent. The respondent and her husband assured that they would repay the same within one month. After one month, the applicant approached the respondent and her husband and

requested them to return his money. The husband of the respondent had issued a cheque of Rs.2,50,000/- to the applicant as part payment and the applicant presented the said cheque with his banker for encashment, however, the cheque was returned to the applicant dishonoured with the remarks “no account number has been mentioned”. Again a cheque No. 636709 dated 15.01.2014 for a sum of Rs.2,50,000/- drawn on Punjab and Sind Bank, Ranjit Avenue,Amritsar was issued in the favour of the applicant as a part payment. On assurance, given by the respondent, the cheque was presented by the applicant to his banker, but the cheque was returned unpaid vide memo dated 30.01.2014. The applicant approached the respondent and requested her to make the payment and the respondent assured the applicant to present the cheque in the bank again. On the assurance given by the respondent, the cheque was again presented by the applicant and the same was returned dishonoured vide memo dated 04.02.2014 with the remarks “Funds Insufficient Opening Balance”. The applicant again requested the respondent to make the payment equal to the cheque amount, but the respondent did not pay any attention to his request. Ultimately, the applicant served the respondent with a legal notice dated 18.02.2014 through registered A.D post, but inspite of service of legal notice, the respondent did not make the payment to the applicant. Ultimately, the applicant was constrained to file a complaint under Section 138 of the “Act”.

3. During the course of trial, the applicant Jagbir Singh appeared as CW-1 and exhibited the original cheque as Ex.C1, bank memos Ex.C2 and Ex.C3, copy of legal notice Ex.C4 and postal receipt as Ex.C5. He was cross examined by the respondent.

4. After the complaianant's evidence, the statement of respondent was recorded under Section 313 Cr.P.C. The respondent submitted that she had a joint bank account with Parkash Kaur, mother of the complainant and the said account could only be operated jointly under the signatures of the respondent and Parkash Kaur, mother of the complainant. No one could operate the said account individually. The applicant had misused the cheque by forging her signatures on the said cheque book, which was lying with Parkash Kaur, who resides with the applicant/complainant. Even no loan was taken by the respondent or her husband. The respondent and Parkash Kaur had purchased a property bearing plot No.658, Hargobind Avenue, Majitha Road, Amritsar vide sale deed dated 14.10.2013 and later on, it was sold by them. The applicant was attesting witness to the agreement to sell of the said property. The applicant also filed another complaint regarding the cheque in question against the respondent and her husband under Section 420 of IPC in the Court of Judicial Magistrate Ist Class, Amritsar, which was dismissed on merits. The applicant also filed a case for recovery against the respondent and her husband, which is pending in the Court of ACJ(SD), Amritsar and the present complaint was filed only to extort money from her.

5. In defence, Ranjit Singh, Officer, Punjab and Sind Bank, Branch Ranjit Avenue, Amritsar appeared as DW-1, who had produced summoned record relating to account No.06951000010442, which was in the name of Parkash Kaur and the respondent. It was a joint account and Account Opening form was exhibited as Ex.D1, Form 60 duly signed by Parkash Kaur as Ex.D1/A, Form 60 duly signed by Shama Soni as Ex.D1/B, true copy of cheque

book issue register as Ex.DW1/C, Certified copies of the cheque as Ex.DW1/D and Ex.DW/E and certified copy of account statement as Ex.DW1/F. Sukhjinder Singh, Hand Writing and Finger Print Expert, Patiala appeared as DW-2 and he had compared the signatures of respondent on the cheque with standard signatures of the respondent and he placed on record his expert opinion report as Ex.DW2/1 and photographic charts Ex.DW2/2 and Ex.DW2/3.

6. After hearing the counsel for the parties, the Trial Court came to the conclusion that the defence of the accused had been probablised and to rebut the evidence led by the respondent, the applicant could not prove any evidence, which could proved the case beyond the shadow of reasonable doubt. Ultimately, the complaint was dismissed and the respondent was acquitted of the notice served upon her.

7. While assailing the impugned jugment, learned counsel for the applicant vehemently argued that in the present case, all the ingredients of the offence under Section 138 of the Act were fulfilled. Even, the Trial Court wrongly held that the the cheque have been signed by the respondent as well as Parkash Kaur. In fact, the cheque was returned back to the applicant only with one remark i.e “Funds Insufficient Opening Balance”. Had the signatures of both the joint account holders been required, such remarks would have been mentioned in the cheque return memo also. Still further, Shama Soni, respondent had admitted her signatures on the cheque and the statutory presumption was against her. Apart from that, the bank had not raised any objection with regard to the signatures on the cheque and the respondent had

been wrongly acquitted by the Trial Court.

8. I have considered the submissions made by learned counsel for the applicant in the light of the evidence led by the parties as well as the settled cannons of law.

9. The Trial Court correctly held that the respondent and Parkash Kaur, mother of the complainant were jointly doing the business of the property. The complainant even tried to mislead during his cross-examination that he did not have the knowledge of the fact that his mother and the respondent had purchased a property jointly. Thus, an adverse inference was rightly drawn by the Trial Court against the present applicant. Further, in her defence, the respondent had examined Ranjit Singh, Officer, Punjab and Sind Bank, Branch Ranjit Avenue, Amritsar as DW-1, who placed on record account opening form and the certified copies of the cheques. He clearly proved that all the cheques were bearing the signatures of both the account holders i.e the respondent as well as Parkash Kaur, mother of the applicant. Even the applicant denied having knowledge of the fact that the respondent and his mother, Parkash Kaur were jointly holders of the account, from which the cheque in question has been issued. This clearly proves that the respondent was having a joint account with the mother of the applicant namely Parkash Kaur and the Trial Court were justified in holding that the defence of the respondent was more probable and the cheque book of joint account of Parkash Kaur and the respondent was lying with Parkash Kaur and the applicant had misused the cheque in question. Apart from that, the applicant had taken the stand that he had advanced a friendly loan of Rs.5,00,000/- to the respondent and when he

was questioned about the source of such a heavy amount, he stated that he had withdrawn the amount from the bank account being maintained by him at Co-operative Bank, Hall Bazaar, Amritsar. He stated that he could produce his passbook and account statement to prove the said fact. However, when he was again cross-examined, he stated that he did not remember the date, month and year when he had withdrawn the amount from the bank account nor he could produce the bank account statement or passbook to prove the withdrawal of the amount.

10. Even otherwise, I have carefully gone through the judgment passed by the Trial Court and the Trial Court has correctly held that the respondent has been successfull in rebutting the statutory presumption in favour of the applicant under Section 139 of the “Act”. Even, the applicant had miserably failed to prove that the cheque in question was issued by the respondent in discharge of her legal debt and the defence version was more probable. Even otherwise, there is no material irregularity, illegality or perversity in the impugned judgment passed by the Trial Court and appeal is meritless.

11. Thus, the impugned judgment dated 25.01.2017, passed by the Court of Judicial Magistrate, Ist Class, Amritsar is ordered to be upheld and the application under Section 378 (4) Cr.PC for grant of special leave to appeal is hereby ordered to be dismissed.

12. Pending application(s), if any,are also disposed of.

(N.S.SHEKHAWAT)
JUDGE

28.08.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No