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

CRM-A-682-2020
Decided on:11.09.2024

Jagjit Singh .... Applicant

versus

Lakha Ram .... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. L.S.Sidhu, Advocate
for the applicant.

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Manjari Nehru Kaul, J. (Oral)

Instant application has been filed by the applicant under Section 378(4) Cr.PC challenging the judgement dated 09.01.2020 passed by Addl Chief Judicial Magistrate, Moga vide which the accused was acquitted of the charges in a criminal complaint under Section 138 of Negotiable Instruments Act (hereinafter referred to as ‘the Act’).

2. As per the allegations levelled by the applicant-complainant (hereinafter referred to as ‘complainant’) in his complaint, the accused had promised to secure a position for the son of the complainant as Sub Inspector in Food Corporation of India, Jaipur (hereinafter referred to as ‘FCI’) in exchange for Rs.15 lakhs, which was paid to him. Upon failing to fulfil this promise, the accused issued a cheque bearing No.374223 dated 20.09.2015 amounting to Rs.15 lakhs drawn at Punjab National

Bank, Zirakpur. When the complainant presented the cheque, it was dishonoured by the bank vide memo dated 22.09.2015 due to “insufficient funds”. At the request of the accused, the complainant again presented the cheque, but it was dishonoured on 25.09.2015 with the same remarks. The complainant then sent a legal notice dated 15.10.2015 demanding payment, but to no avail.

3. The Trial Court based on the evidence presented, acquitted the accused, holding that the complainant had failed to prove that the cheque was issued in discharge of a legally enforceable debt or liability. The Court further concluded that there was no lawful contract between the parties, as no credible evidence was presented by the complainant to substantiate his allegations.

4. Learned counsel for the complainant has reiterated the allegations levelled in the complaint by arguing that the accused had agreed to get a job in FCI in lieu of a sum of Rs.15 lakhs. He has contended that the Trial Court failed to consider that once the accused admitted to signing the cheque, a presumption under Section 139 of NI Act arose in favour of the complainant. Learned counsel further argued that the accused failed to rebut this presumption with any credible evidence, as he did not contest how the cheque came into possession of the complainant nor did he demand its return.

5. Heard learned counsel for the parties and perused the relevant material available on record.

6. It is undisputed that the complainant paid Rs.15 lakhs to the accused with an intention of securing a job for his son in the FCI. Such a transaction cannot be considered a lawful consideration as both the payment and its purpose were inherently illegal. Consequently, any agreement arising from this arrangement would be void under Section 23 of the Contract Act, as it contravenes public policy and does not form a legally binding contract.

7. Issuing a cheque, by itself does not constitute an offence under Section 138 of NI Act. It must be proven that the cheque was issued for the discharge of a “legally enforceable debt or liability”. While Section 139 of NI Act creates a presumption that a dishonoured cheque was issued for repayment of a debt or liability, there is no presumption that the debt or liability is lawful. The burden remains on the complainant to prove that the cheque was issued for a legally enforceable debt or liability.

8. Since the complainant admitted paying the accused for an unlawful purpose - for securing a job - the debt in question does not qualify as legally enforceable. Even assuming the cheque was issued as alleged, it cannot be said to have been issued for a legal debt. Therefore, the provisions of Section 138 of NI Act are not applicable in this case.

9. This Court concurs with the findings of the learned Trial Court that the complainant failed to prove that the cheque was issued for a valid consideration or to discharge a legally enforceable debt. Given that the agreement between the parties was void from inception

and contrary to public policy, the complainant cannot seek recovery under Section 138 of NI Act.

10. As a sequel to the above, the present petition being devoid of any merit, stands dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

11.09.2024 **(MANJARI NEHRU KAUL)**
sonia **JUDGE**

Whether speaking/non-speaking? Yes/No
Whether reportable? Yes/No