

CRM-A-1718-2019 (O&M)
Decided on: 11.03.2024

versus

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

CRM-23423-2019

Main case

2. As per the allegations levelled in the complaint filed by the applicant-complainant (hereinafter referred to as 'complainant'), in the month of April, 2016, she advanced a friendly loan to respondent-accused (hereinafter referred to as 'accused') in the sum of Rs.2 lacs.

SONIA BURA
2024.03.18 10:42
I attest to the accuracy and
integrity of this document

No.000006 dated 02.07.2016 (hereinafter referred to as 'cheque in question') for an amount of Rs.2 lacs drawn at Bank of Baroda, Karnal in favour of the complainant. However, on presentation of the cheque in question by the complainant, it was returned vide return memo dated 05.07.2016 with remarks "Opening Balance Insufficient". The complainant thereafter sent a legal notice dated 19.07.2016 to the accused, however, despite receipt of the legal notice, the accused failed to make the payment to the complainant. Left with no other remedy, the complaint in question was then filed by the complainant.

3. After considering the material on record and evidence led by the parties, the Court below acquitted the accused by holding that the complainant had failed to prove the offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act') against the accused beyond the shadow of reasonable doubt.

4. Learned counsel appearing for the applicant has reiterated the allegations levelled in the complaint against the accused by asserting that an amount of Rs.2 lacs had been advanced as a friendly loan to the accused, which fact the trial Court failed to appreciate in the right perspective despite the fact that the accused did not dispute her signatures on the cheque in question and thus, a presumption under Sections 118 and 139 of Act arose in favour of the complainant. Learned counsel has further vehemently argued that the trial Court had erroneously held that the complainant did not possess the financial capacity to advance the loan in question to the accused as no evidence

in support thereof had also been led. Learned counsel has still further submitted that while getting her statement recorded under Section 313 Cr.PC, the accused had merely stated that she had been falsely implicated and no challenge whatsoever had been made by her to the financial capacity of the complainant to advance loan in question. It has been further argued that in fact in the bank statement of the complainant, it stood reflected that there was a withdrawal in the sum of Rs.2 lacs on 06.04.2016. Furthermore, learned counsel has submitted that thus, it could not be said that the accused did not have any legal liability to pay the complainant, more so, when the accused had not been able to rebut the presumption under Section 139 of the Act by leading any cogent evidence in support of her defence.

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

6. No doubt, when the signatures on the cheque in question have not been disputed by the accused, hence, it would attract presumption under Section 138 of the Act, however, the said presumption is rebuttable on preponderance of probabilities. The law is fairly settled in this regard that the accused in order to prove his defence and to demonstrate that the complainant in a particular case did not have the financial capacity, can produce independent witness on his behalf or can demonstrate the same pointing to any lacuna in the material produced by the complainant himself or through a cross-examination of the complainant's witnesses. A perusal of the material

on record reveals that the complainant during her testimony as CW-1 alleged that she had advanced the loan amount to the accused in the presence of one Sharmila, however, strangely for reasons best known to the complainant, said Sharmila who could have been the best witness to support her case, was not even examined. Still further, it does not appeal to prudence that the complainant, who was a teacher, drawing a salary of Rs.17,000/- per month, would have advanced a friendly loan and that too in the sum of Rs.2 lacs, without any receipt or even charging any interest thereupon. Mere entries of self withdrawal reflected in the bank statement of the complainant would not be sufficient to infer that the said amount had been handed over to the accused that too in the absence of any document/receipt having been executed in the said regard.

7. As a sequel to the above, this Court concurs with the findings recorded by the Court below. Accordingly, the present application being devoid of any merit stands dismissed.

11.03.2024
sonia

(MANJARI NEHRU KAUL)
JUDGE

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