IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CRM-A-413-2020
Date of Decision- 30.08.2024

DEVENDER SINGH

…..APPLICANT/APPELLANT

VERSUS

JOGENDER THEKEDAR

…...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Virat Rana, Advocate with
Mr. Vikram Singh, Advocate for the applicant/appellant.

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SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked to challenge the judgment dated 12.02.2020 passed by the learned Judicial Magistrate Ist Class, Sonepat, whereby the complaint no. 685 of 2017 under Section 138 of the Negotiable Instrument Act, 1881, has been dismissed and the accused, respondent herein, has been acquitted of the charge against him.

2. Factual matrix of the case unfolds that both the parties were having cordial relations with each other when the accused-respondent borrowed Rs. 2,00,000/- as friendly loan from the applicant in June 2016 which he had promised to return to the applicant within six months. In order to discharge his legal liability, he issued a cheque bearing no. 707576 dated 23.05.2017 for a sum of Rs. 2,20,000/- drawn on State Bank of Patiala,

Murthal, Sonipat which when presented by the applicant was returned vide memo dated 29.05.2017 with remarks "*funds insufficient*". Thereafter, a legal notice was sent through registered post to the accused-respondent dated 06.06.2017 but no heed was paid to it which compelled the applicant to file complaint under section 138 of NI Act 1881 which was dismissed. Hence, the present appeal.

3. It is contended by the learned counsel for the appellant that the learned Judicial Magistrate Ist Class, Sonepat (hereinafter referred as – 'Court below') has erred in acquitting the accused in this case because the applicant had successfully proved his case whereas the accused-respondent failed to lead any evidence in his defence, which shows that the accused-respondent had nothing to say in his defence. It is further contended that the cheque in question was not given as security which indicates that the cheque was given in discharge of legal debt/liability.

4. He strenuously argues that the trial court has misread the oral as well as documentary evidence on record as the affidavit dated 27.05.2014 executed by the accused/respondent does not say that the cheque in question was given as security in respect of the car purchased by the accused/respondent. The accused had sold the car to one Manoj and executed another affidavit dated 05.01.2017 whereby said vehicle was sold to Manoj and there is specific averment in the affidavit about three cheques given as security by the purchaser – Manoj, which will be used if there is non-payment. Therefore, the learned Court below has failed to appreciate the evidence in its correct perspective. Accordingly, the impugned order is liable to be set aside and the accused-respondent is liable to be convicted and sentenced appropriately.

5. Heard. The case file is also perused.

6. It is seen from the perusal of the case file that the dispute in the present case relates to the advancement of friendly loan of Rs.2,00,00/-. The facts in brief are that the parties to the lis were having cordial relations and on the request of the accused, complainant lent an amount of Rs.2,00,000/- to the accused in the month of January, 2016, which was to be repaid by the accused within six months. In order to discharge the legal liability towards refund of the loan amount, accused issued a cheque bearing No.707576 dated 23.05.2017 amounting to Rs.2,20,000/- drawn on State Bank of Patiala, Murthal, Sonepat. On presentation of the cheque by the complainant through his bank – Oriental Bank of Commerce, Sonepat, it was returned vide memo. dated 29.05.2017. Despite serving a legal notice, through counsel, for return of the amount of Rs.2,20,000/- within fifteen days, the complainant failed to do so. Hence, the accused is liable for the commission of offence under Section 138 of the Negotiable Instrument Act, 1881 (for short – 'NI Act').

7. The learned court below, after examining the entire evidence, has ultimately acquitted the accused-respondent from the charge against him, vide judgment dated 12.02.2020, after recording its observations in para 12 of the judgment, which are as follow :-

> *"12. The accused just has to raise a probable defence. The complainant in his cross-examination has admitted that he had sold his beat car to the accused Joginder. He further admitted that the installments of the car were paid by the accused during the time period when the car was in his possession. He also admitted his signature upon the compromise Ex.R1, vide which the car taken back by the complainant from the accused. This admission by the complainant corroborates the version of the accused that he bought a car from the complainant. The cheque*

Ex.C1 also bears different handwritings. The signature of the accused are in hindi whereas the words written over the cheque are in english. This shows that the cheque was indeed filled up later by some one else and not by the accused. The circumstances, if coupled together, are sufficient to rebut the presumption of existence of legal liability. Now, the onus shifted upon the complainant to prove that he had indeed given loan to the accused as alleged. In this task, the complainant has failed miserably. No document whatsoever of the alleged transactions between the complainant and accused has been produced in defence. Ex.R2 is an affidavit which was given by the accused regarding the purchase of beat car. This document, at least shows that complainant and the accused had earlier transactions and they had the sense to get the transaction written down. When the earlier transactions were taken down in writing by the complainant and accused, there was no cause whatsoever for not getting the alleged transactions of the loan written down on paper. There is no such document on file. There is also no witness of the alleged transactions between the complainant and accused. There is no witness of the fact that accused had given Ex.C1 cheque to the complainant as payment of loan taken by the accused. The complainant has failed to prove his case against the accused."

8. Therefore, the learned Court below has very rightly adjudicated upon the controversy in its correct perspectivity. This Court does not find any illegality and ambiguity in the judgment sought to be impugned by the complainant in this appeal. Even the learned counsel for the appellant has also failed to point out any technical illegality or ambiguity in the judgment. Further, according to the complainant version, the loan was to be repaid within six months. As such, the loan was allegedly advanced in the month of June, 2016 and the period of six months was due to expire in the month of

December, 2016 and the cheque was to be used for realization in/after the month of December, 2016, in case of repayment of entire loan amount, however, the applicant presented the cheque in question in the month of May, 2017 and the cheque is also dated 23.05.2017. Meaning thereby, if the loan was advanced in June, 2016, the cheque ought to have been of some date of the month of June, 2016 and not of 23.05.2017. Thus, the complainant has miserably failed to prove his case and no fault can be found with the judgment of the learned Court below which says that :

> *"The cheque Ex.C1 also bears different handwritings. The signature of the accused are in hindi whereas the words written over the cheque are in english. This shows that the cheque was indeed filled up later by some one else and not by the accused."*

9. Consequently, in view of the above discussions, the present appeal fails and is hereby ordered to be dismissed being devoid of merits.

(SANDEEP MOUDGIL)
JUDGE

30.08.2024
Poonam Negi

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*