

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

CRR-1827-2008
Decided on: 20.04.2024

Dr. Rajesh Kumar Gaba

.... Petitioner

versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Rakshak Gupta, Advocate
amicus curiae for the petitioner.

Mr. Navdeep Singh, DAG, Punjab.

Manjari Nehru Kaul, J. (Oral)

The present petition has been filed against the impugned judgment dated 11.08.2008, passed by Additional Sessions Judge, Jalandhar (Annexure P-1), whereby, the judgment dated 24.08.2006 (Annexure P-2) passed by JMIC, Jalandhar, was upheld and the appeal of the petitioner was dismissed.

2. As per allegations levelled by the complainant, the father of the accused and the co-accused had family ties with the complainant. The accused requested for a loan of Rs.11 lacs from the complainant, citing the need to submit a tender to a pharmaceutical company. The complainant paid Rs.11 lacs to the accused on an assurance that it would be repaid later. To fulfil this liability, the accused issued five post-dated cheques to the complainant. However, when the complainant presented the cheques on 10.09.2003, they were

dishonoured due to insufficient funds in the bank account of the accused. On being informed and despite assurances given by the accused that the cheques would be honoured in future, the cheques were presented again on 11.03.2003, however, they were yet again dishonoured due to insufficient funds. Following this, the complainant sent a notice to the accused, who neither replied to the same nor made good the payment.

3. Learned trial Court after examining the preliminary evidence, summoned the petitioner-accused to face trial for commission of offence under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act'). Upon appearance, a notice of accusation was served, to which he pleaded not guilty and claimed trial. Consequently, learned trial Court after appreciating the evidence recorded, convicted the petitioner - accused No.1 for commission of offence under Section 138 of the Act and sentenced him to undergo RI for two years along with payment of fine of Rs. 1000. Aggrieved by the judgement of conviction, the appeal preferred before Additional Sessions Judge, Jalandhar was dismissed due to non-prosecution on 11.08.2008.

4. Learned counsel for the petitioner contends that the trial Court gravely erred in convicting him under Section 138 of the Act. The Courts failed to consider a crucial admission, which was made by the respondent-complainant during his cross- examination, wherein he confessed that he did not have the means to extend the loan of Rs.11

lacs, which had been purportedly advanced by him to the accused. Learned counsel asserted that this admission casts a significant doubt on the veracity of the accusations and the claim made by the complainant. Additionally, the absence of any supporting documentation to substantiate the existence of a legally enforceable debt between the petitioner and the complainant was most paramount in this case. Consequently, the complainant had failed to establish his capacity to advance the purportedly loan.

Furthermore, learned counsel asserted that the actual amount lent by the complainant was Rs.3 lakhs and not Rs.11 lakhs as had been alleged in the complaint, and the disputed cheques had been issued as collateral for loan repayment. Learned counsel maintained that the accused had been diligently repaying the loan through installments and the account remained unsettled. Moreover, he contended that the complainant misused the blank signed cheques, originally provided as security, to falsely implicate the accused. Learned counsel, thus, argued that all these circumstances raised doubts about the existence of any legally enforceable debt between the petitioner and the complainant. Learned counsel also emphasised that the petitioner is a law-abiding citizen leading a peaceful life and has endured prolonged criminal proceedings for the past 18 years.

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

6. Upon thorough examination of the material and other

evidence led during trial, it stands unequivocally proved that the accused indeed obtained a loan of Rs.11 lakhs from the complainant. The issuance of three cheques, which are Exhibits P-1 to P-3 totalling Rs.5 lakhs, was evidently intended to fulfil this legal obligation, which stands corroborated by the admission of accused himself, that he is a signatory to the cheques in question. Furthermore, learned counsel for the petitioner failed to rebut the legal presumption that cheques Ex.P-2 and Ex.P-3 were issued to settle a liability with respect to the alleged loan amount of Rs.11 lakhs.

7. In the light of the above circumstances and evidence led, it is unmistakeably clear that the judgment of conviction passed by the Court below does not suffer from any perversity and is in accordance with settled law. The Court has soundly appreciated the evidence presented during trial.

8. Thus, in the present circumstances, it is evident from the perusal of the judgments of conviction passed by both the learned trial Court and the lower Appellate Court that there is no perversity in their findings and the same are based on correct appreciation of evidence available on record.

9. As a sequel to the above, present petition being devoid of any merit, stands dismissed.

20.04.2024
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?
Whether reportable?

Yes/No
Yes/No