IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

263

2024:PHHC:031822
CRM-A-936-2019
Date of decision: March 4^{th}, 2024

Pardeep

.....Applicant

Versus

Abhishek Khurana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Raghav Sharma, Advocate
for the applicant.

MANJARI NEHRU KAUL, J.

The applicant-complainant (hereinafter referred to as 'complainant') is impugning the judgment dated 26.02.2019 passed by the learned Judicial Magistrate 1^{st} Class, Panipat, whereby respondent-accused (hereinafter referred to as 'accused') was acquitted of the charges framed against him in a criminal complaint i.e. CIS No.NACT-2068 of 2017 filed under Section 138 of The Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. As per the allegations levelled in the complaint, the accused borrowed a friendly loan of ₹5 lakh from the complainant in August, 2014 for five months. After repeated requests made to the accused for repayment of the said loan, he issued a cheque bearing No.511212 dated 22.06.2017 (Exhibit C2) for ₹5 lakh in favour of the complainant. On presentation of the cheque by the complainant, it was returned vide return memo dated 27.06.2017 (Exhibit C3) with the remarks "drawer's signatures differ". The complainant thereafter sent a legal notice dated 07.07.2017 calling upon the accused, to make the payment but in vain.

3. The learned trial Court on the basis of the evidence and other material led, acquitted the accused by holding that the complainant had miserably failed to prove his case against the accused as no evidence much less cogent was led by the complainant to prove the existence of a legally enforceable debt, whereas the accused, on the other hand, had been able to successfully rebut the presumption under Section 139 of the Act.

4. Learned counsel appearing for the complainant has reiterated the allegations levelled in the complaint in question by asserting that the accused had borrowed a sum of ₹5 lakh from him. He has submitted that the trial Court had failed to appreciate that once the accused had not disputed his signatures on the cheque in question, therefore, a presumption under Sections 118 and 139 of the Act arose in favour of the cheque holder, and mere non-disclosure of the said loan in his Income Tax Returns could not have been an adequate ground to throw out the case of the complainant. It has been further submitted that the trial Court had ignored settled law by drawing an adverse inference against the complainant on the ground that there was no written agreement executed between the parties with respect to the alleged transactions.

5. I have heard learned counsel for the applicant and perused the relevant material on record.

6. The complainant failed to provide any documentary evidence much less any written agreement to prove the alleged advance of ₹5 lakh as loan to the accused. It is indeed very strange that the complainant claimed to have given the loan in cash without any witness being present at the relevant time. While the complainant stated that he

had withdrawn the amount from his bank and then given it to the accused, the bank statement (Exhibit C5) only showed a self-withdrawal, and not any transfer of the loan to the accused. Additionally, during his cross-examination, the complainant admitted to never visiting the house of the accused nor being a resident of the same village, making it highly unnatural and unlikely for him to lend money to the accused without any documentation or in the absence of any witness.

7. As a sequel to the above, this Court concurs with the observations made by the learned trial Court that in the absence of a written loan agreement, coupled with the failure of the complainant to establish the loan advancement, the accused had successfully presented a plausible defence by rebutting the presumptions under Sections 118-B and 139 of the Act. The complainant was unsuccessful in proving that the cheque in question was issued to settle a legally enforceable debt.

8. The application stands dismissed.

March 4th, 2024 **(MANJARI NEHRU KAUL)**
Puneet **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No