2024:PHHC:072291

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Criminal Revision No.2510 of 2012
Date of decision: May 18th, 2024

Jai Gopal

.....Petitioner

Versus

Jeet Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Naazpreet Kaur, Advocate
for Mr. Rajbir Singh, Advocate
for the petitioner.

None for the respondent.

MANJARI NEHRU KAUL, J.

Case called twice, however, none has put in appearance on behalf of the respondent.

2. The petitioner is impugning the judgment dated 10.08.2011 passed by learned Sessions Judge, Sangrur, whereby it set aside the judgment of conviction and order of sentence dated 06.01.2010 passed by learned Sub Divisional Judicial Magistrate, Sunam, for commission of offence under Section 138 of The Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I. Act').

3. As per the allegations in the complaint, the petitioner/ complainant advanced a friendly loan of ₹4,70,000/- to the accused, who assured its repayment. To discharge his legal liability, the respondent-accused issued cheque No.317538 dated 05.05.2005 for ₹4,70,000/- in favour of the complainant, drawn on the Oriental Bank of Commerce. However, when the cheque was presented at Punjab National Bank, Sangrur, it was returned on 10.05.2005 with the remarks

'funds insufficient'. Subsequently, a legal notice dated 25.05.2005 was served on the accused by the complainant demanding payment of the cheque amount within 15 days. Despite receiving the notice, the accused neither replied nor paid the cheque amount. Consequently, the petitioner filed a complaint under Section 138 of the N.I. Act. The learned SDJM, Sunam, in its judgment dated 06.01.2010, convicted the respondent sentencing him to one year of rigorous imprisonment and imposing a fine of ₹5,000/- along with a default clause.

4. The respondent then appealed the decision, and on 10.08.2011, the learned Appellate Court, Sangrur, allowed the appeal, setting aside the judgment of learned SDJM, Sunam, dated 06.01.2010, and acquitted the respondent. Hence, the instant revision.

5. Learned counsel for the appellant contends that the learned Appellate Court, while passing the impugned judgment, overlooked the well-reasoned judgment of learned SDJM, Sunam, which had meticulously discussed every aspect of the case. Further, the learned trial Court had rightly held that the petitioner had been able to prove all allegations in his complaint, supported by the testimony of bank officials from both his as well as the bank of the accused, corroborating the presentation and dishonour of the cheque due to insufficient funds. Learned counsel further argued that the trial Court had also rightly rejected the defence of the accused, which had relied on an expert witness, who claimed that the cheque was forged. The Court found this opinion unreliable, especially given the substantial evidence presented by the complainant. It noted the improbability of forging a cheque with two signatures of the accused, Jeet Singh.

6. Learned counsel further asserted that the learned Appellate Court, however, erroneously based the impugned judgment while acquitting the accused on the report of handwriting and fingerprint expert DW-1 R.V. Vashishat, who stated that the disputed signatures on the cheque did not match the standard signatures of the accused and were in fact, forged signatures. Nevertheless, during cross-examination, DW-1 R.V. Vashishat, admitted several contradictions in the standard signatures, which the Appellate Court failed to consider, and thus, erred in passing the impugned order.

7. Furthermore, learned counsel also argued that the Lower Appellate Court did not take into account that the bank returned the cheque solely on account of insufficient funds, with no remark with respect to the different signatures, which would have indicated forgery. It was also argued by the learned counsel that if the petitioner's claim of forgery were proved, the bank's memo would have noted non-matching of signatures. The Appellate Court also failed to appreciate that the respondent did not rebut the presumption under Section 139 of the N.I. Act, leading to the conclusion that the cheque was issued to discharge a legally enforceable debt/liability.

8. I have heard learned counsel for the petitioner and perused the relevant material on record.

9. A perusal of the impugned judgment as well as the available record reveals that in his complaint, the complainant alleged that the respondent had borrowed ₹4,70,000/- from him and issued the cheque in question in discharge of his legal liability. However, as the learned Appellate Court rightly noted, the complainant failed to specify the exact

date, month or year of the alleged loan, and these details were similarly absent from the testimony of the complainant when he testified before the trial Court as PW-3. Furthermore, the Appellate Court observed that there were significant contradictions made by the appellant during his deposition. In his cross-examination, the appellant claimed for the first time that the respondent did not received cash loan but instead he owed him ₹4,70,000/- for milk sold in the year 2005. This new allegation about the sale of milk was not mentioned and rather, was conspicuously missing in the original complaint, and the complainant was unable to provide any details or documentation of these transactions.

10. Conversely, the accused, during his defence and cross-examination of the complainant PW-3 Jai Gopal, stated that he had left his cheque book at the complainant's workplace, from which 31 blank cheques were allegedly taken and one was forged. Although the complainant denied this accusation, the respondent bolstered his claim by examining DW-1 R.V. Vashishat, a handwriting expert. DW-1 R.V. Vashishat compared the disputed signatures on the cheque (dated 05.05.2005) with the known signatures of the respondent from various documents and concluded in his report that the signatures did not indeed match. The complainant did not produce any expert to counter the finding given by DW-1 R.V. Vashishat.

11. Given these circumstances, there is no reason for this Court to disagree with the findings recorded by the Lower Appellate Court. The accused indeed was successful in raising a probable defence, whereas the complainant failed to prove the existence of a legally enforceable debt or liability.

12. The instant petition stands dismissed.

May 18th, 2024 **(MANJARI NEHRU KAUL)**
Puneet **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : No