2024:PHHC:159515

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

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**CRM-A-2694-2019
RESERVED ON: 02.09.2024
PRONOUNCED ON:29.11.2024**

SUKHJINDER SINGH

.....APPLICANT/APPELLANT

VERSUS

HANS RAJ

......RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Priyanshu Kamra, Advocate
for the applicant/appellant.

Mr. K.B. Raheja, Advocate
for the respondent.

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SANDEEP MOUDGIL, J

1. The applicant-complainant has preferred the present application under Section 378(4) Cr.P.C for the grant of special leave to appeal against the order of acquittal dated 05.08.2019, passed by Sub Divisional Judicial Magistrate, Abohar, dismissing the complaint under section 138 of the Negotiable Instruments Act (for short ' the Act')

2. Factual Matrix of the case leading to the filing of present appeal unfolds as that the accused had borrowed a sum of Rs.7,00,000/- for a short duration and in order to discharge his liability, issued a cheque No. 525704, dated 28.07.2016 for an amount of Rs.7,00,000/- of the Punjab National Bank, Khuian Sarwar. On presentation of the said cheque through his banker i.e. HDFC Bank, Khuian Sarwar, it was sent for collection to the banker of the

accused i.e. Punjab National Bank, Khuian Sarwar, but the said cheque was dishonoured vide memo dated 30.07.2016 with the remarks "***Payment Stopped by Drawer"***. The applicant/complainant informed the accused about dishonouring of cheque and requested him to make the payment of the said cheque. When despite having served with the legal notice dated 08.08.2016, the amount was not refunded, the applicant was constraint to file the present complaint.

3. The applicant-complainant examined himself as CW1 in his preliminary evidence and on the basis of this evidence the respondent/accused was ordered to be summoned by the trial Court vide order dated 06.09.2016 under Section 138 of the Act. In support of his evidence the complainant while appearing as CW1, has tendered into evidence his affidavit as Ex.CW1/A in the form of examination-in-chief and reiterated the contents narrated in the complaint. He further proved the documents including original cheque Ex.C1, memos Ex.C-2 and C-3, copy of legal notice Ex.C-4, postal receipt Ex.C-5, bank statement C-6 and relevant entry in the same as Ex.CA and closed his evidence.

4. The accused has got his statement recorded under Section 313 Cr.P.C. wherein he was confronted with all incriminating evidence against him. He pleaded innocence and rather false implication in the case.

5. Learned trial Court vide judgment dated 05.08.2019 has acquitted the respondent-accused for the offence under Section 138 of the Act.

6. Learned counsel for appellant contends that the learned trial Court has erred in law while dismissing the complaint without appreciating the fact that no iota of evidence has been led by the accused/respondent to prove the fact that the present cheque has been misused by the appellant. Rather it has been

duly proved on record that to discharge the said liability, the cheque in question was issued by the appellant. Moreover, once the cheque stands admitted the presumption under Section 139 of the Negotiable Instruments Act, 1881 (in short Act of 1881) shifts upon the accused to rebut the presumption that the cheque was not issued in discharge of any legal liability.

7. Heard learned counsel for the respective parties.

8. In his statement under Section 313 of the Cr.P.C., 1973, the respondent-accused denied all the allegations. However, he admitted providing of four blank cheques bearing Nos. 525701-525704 as security for the Kinnow orchard leased to the applicant-complainant and his father in the year 2012-2013. He stated that out of four cheques, three cheques were encashed and a Cheque No. 525704 was retained by the applicant-complainant. Though, he had fully paid the orchard lease but the applicant-complainant failed to return the cheque in dispute, preventing him from stopping payment. He owes no liability to the complainant and alleged that the witnesses of the complainant gave false testimony.

9. The respondent-accused claimed that the check in question was issued solely for security purposes. During cross-examination, the applicant/complainant acknowledged that the accused was his father's friend that their transactions were limited to the Kinnow orchard leasing agreement. Moreover, the respondent-accused had paid the full amount due for the orchard lease, leaving no outstanding debts. This testimony supports the claim of the respondent-accused that he had paid the entire amount for the orchard lease in the year 2012-2013. The complainant also acknowledged his father's writing on Ex.D1, which shows receipts of various amounts, including Rs. 1,50,000,Rs.

1,95,000,/- Rs. 50,000, Rs. 5,000, Rs. 10,000, Rs. 3,00,000, Rs. 20,000, Rs. 1,00,000 Additionally, the accused provided evidence that the father of the complainant received an amount of Rs. 5,00,000 through cheque No. 525701, 26.02.2013. The cheque in question bears a different pen and handwriting for the amount and date, filled in on 28.07.2016. The signature of the respondent-accused on the cheque is in different ink, indicating it was issued in February-March 2013.

10. Given the circumstances, where there are no other transactions between the accused, the complainant, and his father, the evidence suggests that the accused has successfully proven that the father of the applicant-complainant withdrew Rs.5,00,000/- on 26.02.2013 through cheque No. 525701. The respondent-accused issued cheque Nos. 525701-525704 in March 2013 as part of the orchard lease agreement and had stopped payment on these cheques on 25.03.2013 and the respondent-complainant had presented the cheque in question at his bank on 28.07.2016.

11. The accused has successfully proven his version that, at the time of taking the orchard on lease in the year 2012–13, the accused issued the cheque Nos. 525701 to 525704, including the check in question, No. 525704, and the accused also stopped the payment qua the said check on 25.3.2013, which proved the fact that the said check was issued by the accused in the month of March 2013. In such circumstances, when it is acknowledged that there is no other transaction between the accused, it is evident that the complainant by putting the date as 28.7.2016 presented the said cheque in his bank.

12. The complainant solely relies on the statement Ex. C6, which shows the withdrawal of Rs.7,00,000/-. However, the applicant-complainant failed to

produce any witness who can corroborate the transaction. The applicant-complainant also failed to prove any written evidence or documentation proving the loan of Rs.7,00,000/- to the respondent-accused.

13. This court finds no reason to disbelieve the contentions of the respondent inasmuch as the appellant has failed to prove that the cheque was issued against the legally enforceable debt and moreover the defence put by the accused is supported by substantial proof and the accused has been able to raise a cogent doubt regarding the truthfulness of the issuance of the cheque in question and once the presumption under sections 118(A) and 139 of the Act of 1881 stands rebutted by the accused. The burden is upon the complainant to prove that the cheque was issued by the accused in discharge of any existing legal liability which the appellant/complainant has failed to prove.

14. It is a settled law as held in "***C.Antony v. K.G.Raghavan Nair, 2002 (4) RCR (Criminal) 750"*** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

15. In view of the discussions made hereinabove as well as on perusal of the judgment passed by the trial Court dated 05.08.2019, this Court is of the considered view that the complainant has failed to establish his case of advancing loan to the accused, so as to raise the presumption contemplated under Section 139 of the Act. Mere signing of cheque is not sufficient to conclude the

commission of offence under Section 138 of the Act. Accordingly, I find no merit in the present application and the same is hereby dismissed.

16. Accordingly, the leave to appeal stands declined.

17. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

29.11.2024
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No