IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-972-MA of 2014
Date of decision: 14th May, 2025

Bhagwan Singh Sandhu

… Appellant

Versus

Gurdeep Kaur

… Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Darshan S. Malwai, Advocate for the applicant.

MANJARI NEHRU KAUL, J.

1. This appeal arises out of the judgement dated 21.01.2009 passed by the Court of learned Judicial Magistrate 1st Class, Dhuri, whereby the complaint filed by the appellant under 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as, 'the Act') was dismissed and the accused, Gurdeep Kaur, was acquitted of the charge.

2. The case of the complainant, as set up before the learned trial Court, was that the accused issued a cheque bearing No.002874 dated 07.06.2005, drawn on UTI Bank, Ludhiana, for a sum of ₹5,00,000/- in discharge of a legally enforceable debt. The cheque, when presented through her banker, State Bank of India, Dhuri Branch, was returned unpaid with the memo dated 28.06.2005 indicating *"payment stopped by drawer"* as the reason for dishonour.

3. A legal notice of demand was then issued by the complainant to the accused on 23.07.2005. Despite service of notice, the

accused failed to make the payment within the statutory period, leading to the filing of a complaint under Section 138 of the Act.

4. In support of the complaint, the complainant examined CW-1, Ramesh Kumar Goel, Deputy Manager, SBI; CW-2 Jagjit Singh, Manager, Axis Bank (formerly UTI Bank); and himself as CW-3. After completion of the complainant's evidence, the statement of the accused was recorded under Section 313 Cr.P.C.

5. The accused, in her defense denied any liability towards the complainant. It was her case that an agreement to sell had been executed on 17.11.2004 between the father of the complainant and the accused, along with her son Sarabjit Singh, for the sale of agricultural land. The complainant failed to get the sale deed registered, despite possession having been handed over. As a result, a compromise was entered into on 06.06.2005, whereunder she agreed to pay double the earnest amount i.e. ₹20,00,000/-.

6. The accused claimed that pursuant to this compromise, she paid ₹6,00,000/- in cash and issued 3 cheques bearing Nos.002872, 002874, amounting to ₹14,00,000/-, including cheque No.002874 for ₹5,00,000/- in the name of the complainant. However, it was contended that the complainant refused to accept the cheques, whereupon the accused withdrew ₹15,00,000/- in cash from her account on 06.06.2005, and paid it to the complainant, who thereafter absconded with both the cash and the cheques.

7. In support, the accused examined DW-1 Amardeep Singh (Property Consultant), DW-2 Navdeep Gupta (Handwriting Expert) and DW-3 Sushil Kumar Singla, the complainant's alleged Business Partner in whose name two other cheques were issued. DW-3 Sushil Kumar

Singla testified that he was not owed any money by the accused and that the cheques issued in his name were at the instance of the complainant.

8. The trial Court, after an elaborate evaluation of the evidence, acquitted the accused on multiple grounds.

9. It found that although the cheque was drawn from an account ostensibly in the name of the accused, CW-2 Jagjit Singh, Manager of Axis Bank, revealed during cross-examination that the account was jointly held with one Baldev Raj. Significantly, it was Baldev Raj who issued the ‘stop payment’ instruction on 09.06.2005, and not the accused herself. The trial Court rightly noted that only the drawer of a cheque may legally issue a ‘stop payment’ instruction. Thus, the dishonour cannot be attributed to an act of the accused herself, as required under Section 138 of the Act.

10. The Court also observed that the complainant had not summoned any documentary proof to clarify the nature of the bank account, whether it was solely in the name of the accused or jointly held. This unexplained factual lacune was material in the context of the legal requirement that the dishonour be due to the act of the drawer or insufficient funds.

11. The trial Court also found that on the date of dishonour i.e. 28.06.2005, the bank account held a balance of ₹ 28,75,697/-, thus ruling out insufficiency of funds. The cheque was returned solely due to the ‘stop payment’ instructions.

12. The complainant, as per the impugned order, failed to therefore clearly establish the underlying liability. Though he denied that other cheques were issued in the name of his business partner, Sushil Kumar, DW-3, categorically affirmed that cheques were issued in

his name at the instance of the complainant and that no liability was owed to him. This casts serious doubt on the version put forth by the complainant and indicated suppression of material facts.

13. The claim of the defence of a cash withdrawal of ₹15,00,000 on 06.06.2005, backed by bank statement, Ex.C3, and supported by DW-1 Amardeep Singh, Property Consultant and DW-2 Navdeep Gupta, Handwriting Expert, was found credible by the Court. DW-2, the Handwriting Expert, opined that all 3 cheques were written contemporaneously, using the same hand and pen, thus supporting the narrative of the defense.

14. In light of the above, the trial Court concluded that the complainant had not approached the Court with clean hands and failed to prove the existence of any subsisting liability. The defence, on the other hand, presented a more probable and substantiated version.

15. Learned counsel for the appellant has contended before this Court that the trial Court committed a grave error in concluding that the cheque was not issued in discharge of a legally enforceable debt. It was argued that in a joint account, either account holder may issue 'stop payment' instructions, and that the complainant had in fact admitted the compromise dated 06.06.2005, pursuant to which the cheque in question was issued. Learned counsel further challenged the defence version of cash payment as unsubstantiated and contradictory, pointing to the lack of independent corroboration and the alleged inaction by the accused for nearly 2 months.

16. I have heard learned counsel for the parties and perused the entire record.

17. Upon careful consideration of the material on record including the submissions made by the counsel for the appellant, this Court finds no infirmity in the appreciation of evidence by the learned trial Court. The cheque was dishonoured due to 'stop payment' instructions issued by Baldev Raj. Even assuming the account was joint, the drawer of cheque No.2874 was solely the accused. The dishonour due to an instruction by a non-drawer does not satisfy the ingredients of Section 138 of the Act.

18. More importantly, the complainant failed to discharge the burden of proving a legally enforceable debt. His denial of issuance of cheques to his alleged business partner is negated by the credible testimony of DW-3 and the Handwriting Expert, which remained unimpeached.

19. The version presented by the defense, of a compromise, issuance of 3 cheques, and cash withdrawal of ₹15,00,000/- on 06.06.2005, is coherent, corroborated by bank documents, and supported by oral evidence.

20. The conduct of the complainant in not explaining the discrepancy regarding the other cheques, in denying facts subsequently established, and in failing to summon vital evidence, undermines his credibility. His case, as rightly observed by the trial Court, suffers from material omissions and suppressions.

21. In proceedings under Section 138 of the Act, the complainant must prove not merely the dishonour of the cheque, but also the existence of a legally enforceable debt or liability on the date of issuance. In the present case, this burden has not been satisfactorily discharged. This Court finds itself in agreement with the findings

recorded by the learned trial Court. The conclusions are well supported by the evidence and grounded in sound legal principles. The instant appeal is meritless and is liable to be dismissed.

22. Ordered accordingly.

(MANJARI NEHRU KAUL)
JUDGE

May 14, 2025
rps

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