IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

258 **CRM-A-1567-2023**
Date of Decision: 01.04.2025

SANTOSH KUMAR CHAWLA
…..APPELLANT

VERSUS

ASHOK KUMAR
…...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Gaurav Vir Singh Behl, Advocate
for the Applellant.

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SANDEEP MOUDGIL, J

1. The application under Section 378(4) CrPC has been filed by the appellant seeking leave to appeal against the judgment dated 09.08.2023 passed by Judicial Magistrate 1st class, Rajpura (in short, 'the trial court'), vide which the respondent has been acquitted in a complaint filed by the appellant under Section 138 of Negotiable Instruments Act 1881(In short "the Act").

2. Briefly, facts of the case are that the Respondent-accused borrowed a sum of Rs.2,80,000/- from the appellant-complainant on 13.09.2018 without any interest as a friendly loan and when he was asked by the appellant to be returned, the respondent issued a cheque bearing no. 641046 dated 01.10.2018 however when the cheque was presented for encashment, the same was returned with the remark "*e-SDPO invalid cheque"*. Aggrieved by the same, on 09.10.2018, a legal notice was issued by the appellant to the respondent to return the amount with interest of 18% per annum.

3. Counsel for the appellant contends that the trial court has erred in passing the judgment while ignoring the fact that C-2, Sh. Ashwani Kumar, Senior Assistant Grain Market, SBI Branch, Rajpura had corroborated the fact that there was no sufficient balance in the account of the respondent.

4. He vehemently argues that it has not been disputed by the respondent that he has not signed the cheque in question rather according to his version of the story, the said cheque was issued without mentioning the date but there is no evidence which he has shown up to prove the same submission. The respondent has rather taken the plea that he has given a loan of Rs.30,000/- to the appellant's sister Ms Jyotsna and in lieu of the same had issued the cheque in question but again the submission is vague as the dates between the issuance of cheque and the loan given by the respondent to the Ms Jyotsna are quite different.

5. In addition, it is argued that the burden of proving that the cheque had not been issued for discharge of lawful debt or liability is on the respondent and if he fails to discharge this burden, then he must be convicted for the offence.

6. Heard.

7. Having heard the counsel for the appellant and going through the case file, this court is of the considered opinion that there is no illegality or infirmity in the judgment passed by the trial court wherein the appellant has miserably failed to prove beyond reasonable doubt the fact legal debt exists qua the respondent.

8. From the perusal of the judgment by the trial court, it is evident that the cheque in question Ex. C1 has not been filled in the handwriting of the respondent. When it is a specific stand of the respondent that the cheque was blank signed and it stands corroborated from the testimony of the appellant, the

defense plea qua misuse of blank signed security cheque by filling the same without the consent of the respondent, cannot be ruled out.

9. Moreover, the perusal of reply to legal notice sent by the respondent same defence has been categorically stated in the said reply to the legal notice and it has further been mentioned that State Bank of Patiala has already merged into SBI, so question of receiving the cheque of State Bank of Patiala from the respondent does not arise at all.

10. In addition, it has also been rightly observed by the trial court that the alleged borrowing relates back to the year 2016 and the cheque of State Bank of Patiala seems to have been issued at that very time and it is highly improbable that an educated person like appellant would accept the cheque of State Bank of Patiala in the year 2018 when the same has been merged with the State Bank of India in the year 2017. Therefore, the defence of respondent qua the misuse of the said security by the appellant cannot be ruled out.

11. In the light of above discussion, this court is of the strong view that the appellant has miserably failed to prove beyond reasonable doubt that the cheque in question has been issued in lieu of any legal liability. Hence no fault can be found with the judgment passed by the trial court dated 09.08.2023 and as such the present application under section 378(4) Cr.P.C stands declined as well the appeal, having no merit stands dismissed.

12. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

01.04.2025
Anuradha

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