IN THE COURT OF SANDEEP SINGH SIHAG, ADDITIONAL CHIEF JUDICIAL MAGISTRATE, COURT No.1, ROHRU, DISTRICT SHIMLA, H.P.

Criminal case no.: 340/03 of 2018
Date of institution :20.12.2018.
Date of decision :05.07.2021.

In Re:
Sh.Mukesh Kumar S/o Sh.Udham Singh R/o Village Sidhroti, PO, Lowerkoti, Tehsil Rohru, District Shimla, HP. ..Complainant.

Versus

Sh.Rajeev Kumar S/o Sh.Vijay Singh R/o Village Sarog, PO Arhal, Tehsil Rohru, District Shimla, HP. .....Accused.

Complaint under Section 138 Negotiable Instruments Act.

For Complainant : Sh.Baldev Deshta, Advocate.

For Accused : Sh.Parvinder Singh, Advocate.

J U D G M E N T : Hereby a complaint case filed by the complainant against the accused alleging to have committed an offence punishable under Section 138 of Negotiable Instruments Act (hereinafter referred to as the Act, in brief) shall be decided and disposed of accordingly.

2. The case of complainant, as set up in the complaint, in brief, is that in August 2018 accused had purchased apple boxes for a consideration and to discharge his aforesaid legal liability, accused issued cheque No.134084 dated 27.08.2018 of amount ₹1,00,000/- drawn on the account of accused. The cheque was presented at Punjab national bank, branch Rohru,

but the same was dishonoured due to 'insufficient funds' vide memo dated 25.10.2018. Thereafter, the complainant issued legal notice dated 19.11.2018 through registered post demanding the cheque amount on correct address of the accused. It is alleged that despite issuance of demand notice the accused did not make payment, therefore, the complainant preferred complaint against the accused on 20.12.2018.

3. In due course of proceedings, on the basis of the preliminary evidence adduced by the complainant vide order dated 09.01.2019 cognizance was taken against the accused for allegedly having committed offence punishable under Section 138 Negotiable Instruments Act and accordingly the accused was summoned and as per the record the case has been tried as summons case and not as a summary trial. On finding a prima facie case, vide order dated 06.08.2019, accordingly notice of accusation for the offence punishable under Section 138 Negotiable Instruments Act was framed against the accused and put to the accused, to which he did not plead guilty and claimed trial.

4. In support of his case, the complainant Sh.Mukesh Kumar himself has appeared as CW-1.

5. Thereafter, examination of the accused under Section 313 Code of Criminal Procedure (hereinafter referred to as Cr.P.C.,

in brief) was recorded, wherein denying the case of complainant the accused did not opt to adduce evidence in his defence.

6. Having heard the learned counsels for the parties and gone through the record carefully, the following points arise for determination in the present case/complaint-

Point No.1 Whether it has been proved beyond all reasonable doubts that in order to discharge legal liability the accused had issued cheque bearing no.134084 dated 27.08.2018 of amount ₹1,00,000/- drawn on Punjab national bank, branch at Rohru in favour of the complainant, which on presentation was dishonoured with remarks ‘insufficient funds’ and the accused had failed to make payment of cheque amount despite being served with legal notice, so, the accused thereby committed offence punishable under Section 138 Negotiable Instruments Act, as alleged?

Final Order

7. For the reasons to be recorded hereinafter while discussing the points for determination, my findings on the aforesaid points are as under-

Point No.1 Yes.

Final Order: The accused is held guilty and convicted of the charge/NoA for the offence punishable under Section 138 Negotiable Instruments Act, as per operative part of this judgment.

REASONS FOR FINDINGS.

POINT No.1.

8. In order to adjudicate upon the point in hand, the evidence on record is discussed and reproduced hereunder, in brief. In support of his case, complainant Sh.Mukesh Kumar, appearing as CW-1 on 24.02.2021, tendered affidavit Ex.CW-1/A in his evidence, wherein the averments of the complaint are reiterated generally and he also tendered cheque, memo and notice etc. On cross-examination, on behalf of the accused, he stated that he works as commission agent of apple for last six years at MFC no.29 Rohru. It is correct that bills are not filed in the case and volunteered that he can produce it. Accused deals in apples as commission agent at MHC no.303. It is incorrect that accused had issued blank cheque Ext.CW-1/B and that no notice was sent to him and that accused has no dealings with him and that he is deposing falsely.

9. On his examination under Section 313 CrPC not denying the assertion of complainant qua having the stated transaction/ dealing with him and that the cheque Ext.CW-1/B is issued under his signatures on the account maintained by him in

discharge of legal liability towards the complainant the accused has simply stated that he has paid the dues and alleged that the complainant has deposed falsely, however, he did not avail opportunity to adduce evidence in his defence.

10. On perusal of aforesaid evidence led on record, it is quite clear that the cheque Ext.CW-1/B had been issued by the accused in favour of the complainant, drawn by the accused on the account held and maintained by him. The said cheque had been returned dishonoured vide memo Ext.CW-1/C for reason 'insufficient funds'. The legal notice Ext.CW-1/D had been issued within the statutory period and sent through registered post vide postal receipt and the complaint was filed within time. The cheque and slip/memo of the bank are perse admissible documents as per Section 145 Negotiable Instruments Act.

11. Indeed, the standard of proof for rebutting presumption of law operative against the accused qua the negotiable instrument in question is preponderance of probabilities, but nevertheless the defence must be clear, cogent and confidence inspiring so that a reasonable minded person of ordinary prudence may take it to be reliable and sufficient qua non-existence of any debt or other liability.

12. The accused has though has not denied that the said cheque was issued to the complainant in discharge of legal

liability and claimed on his examination that he has paid the dues, however, no clear and cogent defence is put up by the accused on cross-examination of complainant's witness and also on his examination under Section 313 Code of Criminal Procedure he has not mentioned any particulars of the said claim of the dues viz. day, date, time, place, denomination, mode and manner whatsoever of the said payment of dues. Moreover, the accused has neither satisfactorily explained as to how and under what circumstances the said cheque happened to be with the complainant and has nor properly explained as to why for any alleged wrong doing he did not timely adopt and pursue accordingly remedial measures.

13. Though, the accused has taken the stance that he had paid the dues to the complainant who has misused his cheque, however, at the outset the said stance of accused has remained unsubstantiated and it lacks credence as no any explanation is furnished for not obtaining any receipt of the said payment and neither even any evidence in regard to the said payment is adduced and if that be so then why, how and under what circumstances the cheque in question remained or say had been left with the complainant. Moreover, nothing such material has come up on cross-examination of the complainant appearing as a witness which may prove to be fatal to his case

and going to support the defence of accused. Moreover, for no any explanation no any particular of the same has been stated to show as to how, whence, on which date, at what time or at which place and in what denomination the said payment was made and neither any evidence has been adduced in that regard. Hence, the defence of accused is not clear, cogent and confidence inspiring. Therefore, in the entirety of the given facts and circumstances of the case, the defence taken by the accused and the submissions of the learned defence counsel in that regard cannot be held to be factually and legally sufficient and proper to rebut the presumption of law operative against the accused qua the cheque in this case as stipulated under Section 139 of Negotiable Instruments Act.

14. Conclusively, the accused has failed to set up any cogent and convincing defense so as to rebut, dispel, displace and dismantle or say thwart the presumption of law operative against him. Accordingly, the point in hand is decided in favour of the complainant and against the accused.

FINAL ORDER

15. As a sequel to findings on the point no.1 supra, the accused Rajeev Kumar is held guilty and convicted for the offence punishable under Section 138 Negotiable Instruments

Act. Be put up for hearing on quantum of sentence.

Announced in the open court today on this 05th day of July, 2021.

-Sd-

(Sandeep Singh Sihag)
Additional Chief Judicial Magistrate
Court No.1, Rohru, District Shimla.

R.K.