IN THE COURT OF SH. JASPINDER SINGH ,
ADDITIONAL SESSIONS JUDGE, LUDHIANA.

Crl. Appeal No.104 dated 29.7.2015
CIS No.CRA-515/15
Date of Decision: 15.9.2016.

Jagdish Dutt Sharma, aged 61 years, son of Girdhari Lal, r/o Plot no 24, Kumar Colony, Tajpur Road, Ludhiana.

....Appellant

Versus

Paramjit Kaur, w/o Avtar Singh, r/o 237, Guru Nanak Nagar, Bhamian Road, 27 feet Road, Near Kuliawal, Ludhiana.

…...Respondent

Appeal against the judgment dated 08.07.2015 passed by the court of Ms. Tejinder Preet Kaur, JMIC Ludhiana.

Present: Sh. K.M. Sethi, Adv. Counsel for the Appellant.
Sh. ND Chopra, Adv. Counsel for the Respondent.

JUDGMENT

The appellant/accused Jagdish Dutt has filed the present appeal against the judgment and order of sentence dated 8.7.15 passed by the court of Ms. Tejinder Preet Kaur, JMIC, Ludhiana, whereby the accused/appellant has been convicted u/s 138 NI Act and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.5000/- and in default of payment of fine to further undergo rigorous imprisonment for one month.

2. The facts in brief are that a complaint has been filed by the

complainant Paramjit Kaur u/s 138 NI Act, alleging inter alia that the accused along with the other family members approached the complainant and they borrowed friendly loan from the complainant of Rs 5,50,000/-. Out of that very loan accused took responsibility to pay an amount of Rs 3,50,000/- for which he issued two cheques no 010244 dated 08.02.2013 for Rs 1,00,000/- and cheque no. 005983 dated 19.02.2013 for Rs 2,50,000/- both drawn on The Jammu and Kashmir Bank Limited, Industrial Area, Cheema Chowk, Ludhiana in favour of the complainant, with the assurance that the same will be encashed on its presentation. However, on presentment of the said cheques by the complainant through his bankers, cheques were received back dishonoured with the remarks "Funds Insufficent"vide bank memo dated 23.02.2013 and 27.02.2013 respectively. Upon this, the complainant got issued the statutory legal notice through his counsel on 05.03.2013 calling upon the accused to make good the amount covered under the cheques in question, but despite this, the accused did not pay the said amount within 15 days from the date of receipt of the notice. Hence, the complainant had been constrained to file the present complaint.

3. On recording the sworn statement of the complainant, the ld. Trial court has summoned the accused to face trial u/s138 of the Act, vide order dated 17.05.2013. The accused on putting up appearance was enlarged on the concession of bail.

4. On finding prima facie case against the accused, a notice of accusation under Section 138 of the Act was served upon the accused vide order dated 04.10.2013, to which the accused pleaded not guilty and claimed trial. Thereafter, the complainant was directed to lead her evidence.

5. During the course of post summoning evidence, Mrs. Paramjit Kaur, complainant has stepped into the witness box as CW1 and proved on record

documents i.e. cheque Ex.C1 and Ex.C1/A , memos Ex.C2 and Ex.C3, Notice Ex.C4, postal receipt Ex.C5.

6. Statement of accused under section 313 Cr.P.C. was recorded wherein the accused denied all the allegations levelled against him and also pleaded false implication. He has stated that he had not issued any cheque to the complainant as there is no legal liability of the accused towards the complainant. Complainant has misused the cheques.She is not entitled for any type of relief. On being asked whether he wants lead any defence evidence, the accused replied in affirmative. The accused tendered into his evidence document Ex.DW1/A, copy of DDR.

7. After hearing the ld. Counsel for the complainant and the accused/appellant, the Ld. Trial Court has convicted the accused under section 138 NI Act and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.5000/- and in default of payment of fine to further undergo RI for one month.

8. Aggrieved by the judgment and order of sentence passed by the Trial court, present appeal has been filed.

9. Upon notice, the complainant/respondent appeared through his counsel. Record of the Trial court has been summoned.

10. The complaint has been filed that the accused/appellant alongwith his family members has approached the complainant for a loan of Rs.5,50,000/-, of which the present appellant has taken the responsibility to pay Rs.3,50,000/- and he has issued the cheques which were dishonoured when presented for encashment for Insufficient Funds. The plea taken by the accused is that no cheque was given. Actually the appellant/accused was admitted in the hospital and other family members were attending him. The complainant used to visit the house of the accused and several signed

cheques were lying in the house and no body was at home. The complainant picked up the signed cheques from the house and misused the same. There is no loan agreement. The complainant has no capacity to pay such a huge amount of loan. So, the appellant cannot be made responsible to face the consequencies of dishonour of the cheque and he has placed reliance on **S. Timmappa vs. L.S. Parkash, 2011(2) RCR(Crl.) 217, Karnataka High Court, Babulal Manakchand Kothari and another vs. Babulal s/o Manakchand Kothari and another, 23010(1) Bom.C.R.(Cri) 307, Bombay High Court, S.K. Jain vs. Vijay Kalra, 2014(2) CCC 372, Delhi High court, Krishna Janardhan Bhat vs. Dattatraya G.Hedge, 2008(1) Crimes(SC) 227, Vijay vs. Laxman and another, 2013(1) RCR(Crl.) 1028 Supreme Court of India, John K. Abraham vs. Simon C. Abraham and anr., 2014(1) CCC 001(SC), K Subramani vs. K. Damodara Naidu, 2015(1) CCC 001(SC), K. Prakashan vs. P.K. Surenderan, 2007(4) RCR(Crl.) 588(SC)**. Thus, from the above plea taken by the accused/respondent it is clear that signatures on the cheques Ex.C.1 and Ex.C.1/A are admitted. It is a settled principal of law when signatures on the cheque are admitted, then there is a presumption that the cheque was issued for consideration and in discharge of legally enforceable debt. Though this presumption is rebuttable. But in order to rebut this, it is for the accused to lead evidence or show from the evidence led by the complainant that there was no legally enforceable debt. In the present case, the appellant/accused has come with the plea that he was hospitalized and the complainant picked up signed cheque from the house and misused the same. In this regard, he has also placed on file the DDR dated 14.2.13 Ex.DW-1/A. But, the cheques, on the basis of which this complaint has been filed, are dated 8.2.13 and 19.2.13 and these cheques when presented for encashment, they were dishonoured on 23.2.13 and 27.2.13 and notice was issued on 5.3.13. The perusal of the DDR Ex.DW.1/A reveals that there is nothing mentioned on this that the cheques in dispute have been stolen. Only loss has been reported. The applicant is not denying that the cheques have not been filled by him. So, the theft of the cheques is not established.

11. The counsel for the appellant has argued that the complainant has no capacity to pay such a huge amount as loan. Even she has not led evidence to prove her capacity to advance the loan. She is only running the boutique and even loan has been raised, which she is returning to UCO Bank. But, in this case, the complainant has produced on the file her income tax returns, Ex.D.1 to Ex.D.4. Meaning thereby she is income tax assessee. The accused in order to support the defence taken by him that the cheques have been stolen from his house does not dare to appear in the court, which also goes to against the accused that the cheques were not stolen.The story that the cheques were stolen is found to be an after thought story. Moreover, if the applicant has knowledge that the cheques have been stolen, apart from lodging the DDR, the best option for the appellant/accused was to move an application with the bank that the cheques have been stolen and if any of the stolen cheque is presented, it should not be encashed. No such report is made to his banker by the accused. So, it is not established that the cheques have been stolen from the house of the accused and they were misused, rather it is established that cheque Ex.C.1 and Ex.C1/A have been issued in discharge of legally enforceable debt. The complainant has led the evidence to prove that these cheques when presented were returned dishonoured by the banker vide memos Ex.C.2 and Ex.C.3. When notice Ex.C.4 was issued asking the accused to pay the amount

of cheque within 15 days through registered post, the postal receipt of which i s Ex.C.6, the accused failed to make the payment. Even on reply was given to the notice issued to the accused.

12. In view of the above discussion, the complainant is able to prove the guilt of the accused for the commission of the offence under section 138 beyond reasonable shadow of doubt.

13. On the quantum of sentence, the counsel for the appellant has submitted that maximum sentence has been awarded to the accused and lenient view may kindly be taken and sentence may be reduced and even prayed for releasing the accused/appellant on probation. But, I do not agree with this contention. Accused has committed the offence and if the benefit of probation of offenders Act is given to such type of accused, then it will send wrong signal to the society and people will indulge in such type of commercial crimes. So, the accused/appellant is not entitled to the benefit of probation of Offenders Act. Keeping in view the cheque amount, the quantum of sentence also does not require any interference. I also upheld the sentence passed by the Trial Court.

14. In view of the above discussion, I do not find any illegality, infirmity or perversity in the judgment and order of the Trial Court, same are upheld. The appeal in hand is dismissed. Accused/appellant be taken into custody to undergo the period of sentence awarded to him by the Trial Court. Record of the Trial Court be returned forthwith. This file be consigned to the record room.

Announced **(Jaspinder Singh)**

15.9.2016 **Addl. Sessions Judge,**

Ludhiana

Jagdish Dutt vs. Paramjit Kaur

Present: Sh. K.M. Sethi, Adv. Counsel for the Appellant.

Sh. ND Chopra, Adv. Counsel for the Respondent.

Arguments heard. Vide my separate detailed judgment of even date, the appeal is dismissed. Accused/appellant be taken into custody to undergo the period of sentence awarded to him by the Trial Court. Record of the Trial Court be returned forthwith. This file be consigned to the record room.

Announced **(Jaspinder Singh)**

15.9.2016 **Addl. Sessions Judge,**

Ludhiana