PBGD030044312020

Presented on : 01-10-2020
Registered on : 01-10-2020
Decided on : 17-12-2024
Duration : 4 years, 2 months, 16 days

IN THE COURT OF
Judicial Magistrate - Ist Class
AT ,Gurdaspur
(Presided Over by Dr. Supreet Kaur)

NACT/455/2020

Nikhil Rajguru s/o Harsh Raj R/o VPO Behrampur, Tehsil and District Gurdaspur.

----Complainant

Versus

Gurnam Singh s/o Hansa Singh r/o village Rangar Pindi, Tehsil and District Gurdaspur.

------Accused

Complaint Under Section 138 Of The Negotiable Instruments Act. P.S. City Gurdaspur.

Present: Sh.Narinder Kumar Sharma Advocate for the complainant.
Accused on bail represented by Shri G.S. Mann, Advocate.

JUDGMENT

The present complaint case has been filed by the complainant against the accused under Section 138 of Negotiable Instruments Act.

2. The brief facts of the present complaint are that accused

had very good relations with complainant for the last so many years and having visiting terms with complainant. It is further submitted that in the month of December 2019 accused requested complainant to give an amount of Rs. 5,50,000/- as loan for fulfilling his domestic needs. Being trustworthy complainant paid accused an amount of Rs. 5,50,000/-. At the time of borrowing amount, accused promised to return the money within 6-7 months to complainant but accused did not pay the borrowed amount as per his promise and kept the matter pending with one pretext to another. It is further submitted that complainant demanded his money back on 15-7-2020 on this accused issued cheque no. 002547 dated 15-07-2020 amounting to Rs. 5,50,000/- of Central Bank of India Branch Behrampur District Gurdaspur in the discharge of his legal liability under his signatures. It is further submitted that complainant deposited the above mentioned cheque in his account in Punjab and Sind Bank Branch Police Line Road, Gurdaspur for encashment. The Punjab and Sind Bank send the cheque for clearance to Central bank of India, however it is matter of regret that the cheque issued by accused was dishonoured and returned unpaid vide memo dated 23-7-2020 with remarks "FUNDS INSUFFICIENT". Complainant collected information from his bank. It is further submitted that accused intentionally and willfully issued the said cheque knowingly that funds are insufficient in his account to honour the cheque, hence accused is liable to be prosecuted u/s 138 of

Negotiable Instruments Act. It is further submitted that accused have committed an offence u/s 138 of N.I. Act for which accused will be punished for imprisonment which may be extended to two years or with fine which may extend to the twice of the amount of cheque or with both. It is further submitted that the complainant has issued a legal notice dated 18-8-2020 to accused demanding him to give the amount detailed and described in the above said cheque, but the accused has refused to return the borrowed amount, hence this complaint. It is further submitted that the accused has not made the payment of the cheque in question uptill now to the complainant despite his repeated requests. Hence, this complaint.

3. After considering preliminary evidence led by complainant as **CW-1** Nikhil Rajguru who tendered his affidavit **Ex.CW1/A** and proved on record documents original cheque **Ex.C-1**, memo **Ex.C-2**, legal notice **Ex.C-3** and postal receipt **Ex.C-4** and closed his preliminary evidence. This Court found sufficient grounds to proceed against accused under section 138 of Negotiable Instrument Act and accused were summoned vide order dated 08.01.2021. Accused surrendered ad the notice of accusation was served upon him on 25.04.2023 to which he pleaded not guilty under Section 138 of Act and claimed trial.

4. In after notice evidence, the preliminary evidence of the complainant was considered as envisaged in the **Indian Bank**

Association and others versus Union of India and others 2014 (2) RCR (Cri.) 598 which is the evidence of CW-1 Nikhil Rajguru who tendered his affidavit **Ex.CW1/A** and proved on record documents original cheque **Ex.C1,** memo **Ex.C2,** legal notice **Ex.C3,** postal receipt **Ex.C4.** During his cross examination, the complainant produced the statement of the account of PNB dated 17.05.2024 as **Ex.C5**. Thereafter, the complainant tendered into evidence account statement **Ex.C6** and closed the after notice evidence.

5. After closure of complainant's evidence, the incriminating material was put to the accused and his without oath statement u/s 313 Code of Criminal Procedure, 1973 was recorded. Accused took the defence that he is innocent and he has been falsely implicated in the present complaint. The rival arguments are heard.

6. Learned counsel for complainant has argued that accused had issued the cheque **Ex.C1** which was dishonored as the funds were insufficient to meet the cheque amount. Thereafter, a legal notice was served upon the accused and even then the payment was not made, so the accused has committed an offence punishable under section 138 of Negotiable Instruments Act, 1881 and she is liable to be convicted.

7. On the other hand, learned defence counsel has argued that complainant has miserably failed to prove that the loan amount was ever advanced by the complainant to the accused. It is further argued that the complainant has failed to prove his financial capacity to

advance the alleged amount of money to the accused. Therefore, it is further argued that the complainant has miserably failed to establish the requisite of Section 138 of the Act against the accused and the accused deserves acquittal.

8. The Court has heard the learned counsel for the parties and has gone through case file very minutely.

9. The main points for determination in this case are as under:-

i) Whether on 15.07.2020, accused in order to discharge of his legal liability issued cheque amounting to Rs.5,50,000/- in favor of the complainant and the same was returned dishonored with the remarks "Funds Insufficient" and thereby he committed the offence punishable under section 138 of the Act?"

10. Since it is a case of specific penal provision i.e. Section 138 of Act, hence it is reproduced below for ready reference:-

> **138. Dishonour of cheque for insufficiency, etc., of funds in the account:** *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed*

to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years] , or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless

(a) the cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation: *For the purposes of this section, debt or other liability means a legally enforceable debt or other liability.*

11. Hence, careful perusal of Section 138 of Act provides following requirements to secure liability of a person.

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1. That Drawer had issued a cheque in lieu of legally recoverable debt.

2. That Cheque was presented within a period of validity.

3. That Cheque was dishonoured.

4. That Notice of dishonour was issued to the drawer within 30 days of the communication of dishonour.

5. That Drawer failed to make the payment within 15 days.

6. If complaint is filed within 30 days after expiry of 15 days, then offence under Section 138 of the Act is made out.

12. To prove its case complainant has himself stepped into witness box as **CW-1** and he has proved on record original cheque **Ex.C-1,** memo **Ex.C-2,** legal notice **Ex.C-3,** postal receipt **Ex.C-4, account statement ExC5 and** account statement **ExC6**. In cases filed under section 138 of Negotiable Instruments Act a statutory presumption has been mentioned under section 118 of Negotiable Instruments Act which provides that whenever a negotiable instrument is made or drawn for consideration then it has to be presumed that every instrument, when it has been accepted or endorsed, it has been accepted, endorsed and transferred for consideration. Section 138 contains another presumption in favour of complainant that when a cheque is received by holder it has to be presumed that said cheque has been issued in discharge of whole or part of debt or other liability. Applying the legal provision, as mentioned under sections 118 and 138 and discussed above, to the present case it can be said that complainant

firm has been able to prove that cheque has been received by it and same has dishonored on its presentation. Once this presumption has been raised then another section which comes into picture is section 139 of Negotiable Instruments Act which provides that presumption under sections 118 and 138 is a rebuttable presumption and the party issuing the cheque can lead evidence to prove that cheque has not been issued for discharging any legal debt. The cheque in question was dishonoured because of funds insufficient. It is settled proposition of law that an individual in possession of incomplete instrument in material particulars, is having a valid authority to fill it up. It cannot be forgotten that as per Section 118 of the Act, there is a presumption in law that the document is supported by consideration. The burden lies on the accused to establish that what is found in the document is not a true and valid one. Reliance is placed in this regard on case law titled as ***Mohd. Rais Vs. State of Rajasthan and other*** **cited as** ***2014 (2), CCC, page no. 409, Rajasthan*** **and on** ***Muthuraj Vs. Ganesan*****, cited as** ***2013 (4) RCR, Criminal, page no. 39, Madras and 2012(2)RCR (Criminal) 306 Gurmeet Singh versus State of Haryana and another and r***eliance in this regard can be placed upon ***Darshan Singh Bhandari Vs M/s Gupta Feed Store through its Proprietor 2015(3) LAR 125 (P&H).***

13. After hearing learned counsel for the parties and after going through the case file properly, this court has reached to the

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considered conclusion that complainant has failed to make out his case as alleged whereas accused has successfully rebutted the presumption under Section 139 of the Act and has also probablized his defence successfully. The complainant has come out with the case that due to good relations between the parties, he advanced loan of Rs.5,50,000/- to the accused in December 2019 and accused issued the cheque in question on 15/07/2020 for repayment of the loan. Learned counsel for accused argued that the complainant has failed to prove his financial capacity to pay the alleged loan amount to the accused. However, complainant has miserably failed to prove his financial capacity to pay the alleged loan amount to the accused. The question of his financial capacity was also put to the complainant **CW1** during his cross examination but the complainant has failed to give any satisfactory answer to prove that from where he has got money which was advanced to the accused. During his cross examination of **CW1** has deposed that he is doing the commission agent shop with his father at village Behrampur. He was doing commission agent work along with his father in the year 2019. Accused Gurnam Singh is residing in village Ranger Pindi. He was known to Gurnam Singh for a long period. It is correct that he was used to sell his crop through their commission agency M/s. Hari Singh and hers Raj commission agent. He is not the license holder. Voluntarily said that his father has the license. He is just looking after his father's commission agent shop.

Above said firm is not a partnership firm. His father is a sole proprietor of the firm and his name is Harsh Raj. He further deposed that he is not employee with the commission agent shop nor he is getting any pay from the above said commission agent shop. He cannot say how much amount his father gave him. Voluntarily said he fulfilled his requirements. He took the amount of ₹5,50,000 from his father. It is further deposed that actually the accused came to borrow the amount from his father and his father refused to advance the amount of ₹5,50,000 to him. Voluntarily said thereafter accused requested him to give the money. He does not know from where his father gave this money to him. He took cash from his father. He further stated that his father withdrew this amount from the firm account of his Hari Singh harsh Raj and gave the money to the complainant in cash. He further deposed that his father withdrew the amount from the bank on different dates and then he kept the same with him and then he gave ₹5,50,000 out of that to me on 03/12/2019. He cannot tell whether his father advances any money to the farmers and make an entry on account ledger. He has not made any entry regarding the payment made to the accused. He did not get any writing regarding the amount of ₹5,50,000 from the accused. From the above deposition made by the complainant during his cross examination, the court is of the considered view that the complainant could not prove his financial capacity and source from where he has advanced money to the accused. He is neither employee of the firm nor he is getting any fixed salary from the form of his father M/s. Hari Singh Harsh Raj. It is also deposed by him that the accused approached his father for advancing money to him but his father refused to do so. Whereas the complainant took money from his father and gave it to the accused despite the fact that his father has refused to advance any loan to the accused. It is hard to believe that if the father of the complainant has refused to pay money to the accused then why the complainant gave him that money and that too without recording any document. The complainant has also not made entry of the money advanced in any of his documents. He has also admitted that it is correct that he has not shown the entry of ₹550,000 in his income tax return as the loan given to the accused announcing. It is correct that there is no entry regarding advancing of the amount of ₹ 5,50,000/- to accused Gurnam Singh in the account book of their commission shop. He has also admitted that they do not advance money to any customer without making an entry in account books. Voluntarily said he has only advanced the cheque amount to the accused without making an entry in the account books. He only supervised the grain bags in the shop of his father at grain market. It is correct that he has no concern with the court books of the commission shop. It is correct that he has no concern regarding any transaction with any client with regard to his father shop. He has also deposed that his father never made any entry regarding the payment which he made to him in the account books as well as in the

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income tax return. Therefore, the complainant has failed to prove any document on file to support his contention that he has received money from his father and advanced it to the accused.

14. The next important discrepancy in the case of the complainant is highlighted by the Ld. counsel for the accused that there is overwriting of the last digit “0” in the cheque in dispute at Mark B on the cheque **Ex.C1**. The suggestion was also put to the complainant during his cross examination but he denied the fact. Highlighting this overwriting, Ld. counsel for the accused has argued that the accused Gurnam Singh bought only crop for the value of ₹40,000 and after that he returned it back to the commission agency. During the cross examination the complainant has also deposed that accused brought only crop for ₹40,000 and after that he turned back. But he does not remember when accused brought crop for sale at their commission shop. Counsel for accused has set up the defence that accused was only having dealing with commission agency of father of the complainant and he has no transaction or dealings with the complainant and the cheque in question was never issued to the complainant for repayment of any alleged loan amount. Perusal of the cheque **Ex.C1** shows that the last digit “0” appears to have been added later on. During cross examination complainant was specifically asked about this overwriting but he could not give any satisfactory answer regarding the last overwritten digit “0”. Thus, in absence of any evidence regarding

advancement of loan by the complainant to the accused, serious doubt creeps in the version of the complainant. He even has failed to prove his good relations with the accused as alleged despite the fact that his father has refused to advance money to the accused. It is the defence version of accused that complainant has misused the cheque in question in connivance with his father on whose commission agent shop the accused used to bring his crops. Complainant has also admitted this fact during his cross examination that accused used to bring his crop at the commission agent shop of his father. This admission of the complainant clinches the case and fully supports the defence version that in fact the accused had no dealing with the complainant and in fact he never received any loan from the complainant and had not issued cheuqe in question against any legally enforceable debt or liability. Therefore, in view of the aforesaid, this court is of the opinion that accused has successfully probablized his defence and has rebutted the presumption attached to the cheque to the effect that it was not issued for any legally enforceable debt or liability. In this regard reliance can be placed upon ***"2006(2) Criminal Court Cases 190 (P&H) Pritam Pal. Criminal Appeal No. 181-SBA of 2003, D/3.10.2005, Kiran Finance Company, Hoshiarpur Vs. Sukhdev Kishan, Nogotiable Instrument Act, 1881, S. 138- Dishonour of cheque-*** Accused is not liable and prosecution has to stand upon its own legs-prosecution cannot take advantage of weak defence.*" Reliance can also be placed* *upon* ***"2008(4) Civil Court Cases 474 (Bombay High Court) V.R Kingaonkar, J. Criminal R.A. No. 256 of 2007, D/04 and 05.03.2008. Rajendraprasad Gangabishen Porwal Vs. Santosh Kumar Parasmal Saklecha*** wherein it is observed that it is not necessary for the accused to produce any positive evidence to rebut the presumption rather the accused can discharge the onus on him even on the basis of material brought on record by the complainant. When the complainant himself has not produced any evidence to prove financial viability of complainant to raise such huge amount, the conviction of accused merely because he admitted his signature on disputed cheque not proper and it does not relieve complainant from proving pre-existing debt or legal liability to pay amount shown in cheques."

15. Therefore in view of the entire discussion and findings given above, it is held that accused had not issued the cheque in question against any legally enforceable debt or liability and accordingly findings on point of determination are hereby returned in negative. Resultantly, the complaint stands **dismissed** and accused is hereby **acquitted**. His bail bonds and surety bonds stands discharged. Necessary intimation be sent to the revenue authorities. The bonds furnished under Sec 437 Cr.P.C shall remain intact till filling of any appeal or revision or till its final decisison. File be consigned to record

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room after due compliance.

Pronounced in open Court:

Dated. 17.12.2024

Seema Shahria Stenographer-II

(Dr. Supreet Kaur), PCS
Judicial Magistrate Ist Class,
Gurdaspur/UID-PB0603

Note:Dictated directly on computer.

Dr. Supreet Kaur, PCS
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