

PBGDA10007412017



Presented on : 17-05-2017
Registered on : 17-05-2017
Decided on : 18-11-2023
Duration : 6 years, 6 months, 1 days

IN THE COURT OF
Judicial Magistrate - Ist Class
AT Batala,Gurdaspur
(Presided Over by Ms. Mehak Puri)

NACT/137/2017

CIS NO.	NACT-137-2017
CNR NO.	PBGDA1000741-2017
Date of Institution	17.05.2017
Date of Decision	18.11.2023

Navjot Kaur wife of Salwinder Singh resident of Village Sukala Tehsil
Batala District Gurdaspur.

...Complainant.

Versus

Roop Basant Singh son of Sh. Mangal Singh resident of Village Bhagtupur
P.S. Ghuman Tehsil Batala District Gurdaspur.

...Accused.

Complaint under Section 138 of Negotiable Instruments Act, 1881.

Present: Complainant in person with counsel Sh. R.S. Boparai, Advocate.
Accused Roop Basant Singh in person with counsel Sh. Manjit Singh, Advocate.

JUDGMENT:

The present complaint has been filed by the complainant Navjot
Kaur against accused Roop Basant Singh under Section 138 of Negotiable In-
struments Act, 1881 (in short NI Act).

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Judicial Magistrate First Class, Batala. (UID No. PB0582).

2. The brief facts of the case are that the accused had received a sum of Rs.6,50,000/- from the complainant for sending her husband, namely, Salwinder Singh to abroad i.e. Georgia, but the accused failed to send her husband to Georgia. After the failing of the accused to send her husband abroad, the complainant demanded the return of the said amount from the accused and after many requests, the accused issued a cheque bearing no.207691 dated 02.01.2017 of Rs.6,50,000/- in favour of the complainant and assured that the cheque would be honoured when presented for encashment. On presentation of the cheque, the same was returned with reasons "Funds Insufficient" vide memo dated 27.03.2017. Then, the complainant got issued a legal notice dated 10.04.2017 through her counsel to the accused but the accused failed to make the payment to the complainant. Hence, the present complaint.

3. In the preliminary evidence, the complainant Navjot Kaur herself stepped into the witness box as CW-1 and deposed through her affidavit Ex.CW1/A and relied upon following documents in the evidence:-

- Ex.C1: Original cheque bearing no. 207691 dated 02.01.2017.
- Ex.C2: Memo dated 27.03.2017.
- Ex.C3: Copy of legal notice dated 10.04.2017.
- Ex.C4: Postal receipt dated 10.04.2017.
- Mark A: Application to SSP Batala.

4. On the basis of the preliminary evidence, the accused Roop Basant Singh was ordered to be summoned to face trial under Section 138 of the Negotiable Instrument Act, 1881 vide order dated 08.08.2017.

5. Upon appearance of the accused, notice of accusation under section 138 of the Negotiable Instrument Act, 1881 was served upon the accused to which he pleaded not guilty and claimed trial.

6. Thereafter, the complainant witness was cross-examined by the learned defence counsel. No other evidence was led by the complainant and the complainant closed her after-notice evidence vide her separate statement.

7. After the closure of the complainant evidence, the statement of accused was recorded under Section 313 Cr.P.C. in which, all the incriminating evidences were put to him which he denied and stated that the witness has deposed falsely and the complaint is false. He further stated that he is innocent and he does not know the complainant and no transaction with regard to money as alleged by the complainant in her complaint had ever taken place. He further stated that the husband of the complainant had taken Rs.50,000/- from him and had also taken his visa and passport and the husband of the complainant had got opened his account and had taken his blank signed cheque at that time.

8. In his defence, the accused himself stepped into witness box as DW1. Thereafter, the learned counsel for the accused closed defence evidence on behalf of accused vide his separate statement.

9. The learned counsels for both the parties have been heard and the case file has been perused.

10. The learned counsel for the complainant has argued that the cheque in question was given by the accused in order to repay the amount taken by him but the same was dishonoured. He further argued that the

accused has not denied his signatures on the cheque in question and thus he is liable for the dishonor of the same. He referred to the presumption under Section 139 of the NI Act and argued that cheque must be presumed to have been issued for legally enforceable debt or liability and the accused had failed to rebut the presumption raised against him. Hence, prayer has been made for the conviction of the accused. The learned counsel for the complainant relied upon following decisions i.e. “*C. Keshavmurthy Vs. H.K. Abdul Zabbar*” (2013 (4) Civil Court Cases 200 (SC)) and “*Adapa Bhogi Raju Vs. SG Ramayya*” (1994 (2) Civil Court Cases 646 (AP)).

11. On the other hand, the learned defence counsel has argued that there was no legally enforceable debt for which the accused was liable. He further stated that the husband of the accused had taken Rs. 50,000/- from him for sending him abroad and for this purpose even his visa and passport was taken by the husband of the accused. He further argued that his account was got opened by the husband of the accused and he took one blank cheque from him which has been misused by the complainant. He further argued that there are material contradictions in the testimony of the complainant and as such he has failed to prove his case beyond reasonable doubt against the accused and hence, prayer has been made for the acquittal of the accused.

12. After hearing the arguments of the learned counsels for both the parties and after going through the file, the following point of determination arises:-

POINT OF DETERMINATION

Whether the accused Roop Basant Singh is liable for the commission of offence under Section 138 Negotiable Instrument Act, 1881 with

regard to dishonour of cheque bearing no.207691 dated 02.01.2017 of Rs.6,50,000/- which he had issued to the complainant, in discharge of his legal liability and is thus liable to be punished under section 138 of the Negotiable Instruments Act, 1881?

13. The complainant's version is that the cheque in question was issued by the accused to the complainant in discharge of his legal liability towards him, i.e. to return the amount taken by him, which was dishonored when presented for encashment. In order to prove his case, the **complainant Navjot Kaur** stepped into witness box as **CW-1** and deposed through her affidavit Ex.CW-1/A which is on lines of the complaint. She deposed that the accused had issued a cheque bearing no.207691 dated 02.01.2017 of Rs.6,50,000/- which is Ex.C1 but the same was dishonored vide return memo dated 27.03.2017 as Ex.C2 with remarks "Funds Insufficient". Thereafter, he got issued legal notice dated 10.04.2017, Ex.C3, to accused and proved postal receipt as Ex.C4 and application to SSP Batala as Mark A. **In her cross-examination**, the complainant stated that she is a housewife and her husband is a crane operator at Qatar and he had gone to Qatar around 13 years ago. She further stated that she had paid Rs.6,50,000/- in 2016 in cash to the accused during the time of the Viasakhi and the said money was given in the presence of Kuldeep Singh, Bikramjit Singh, Sangam Singh and some other persons whose name she does not remember, however, they belonged to her village. She further stated that the accused is working as an agent but he does not have any office and she does not know how many people have been sent abroad by the accused. She further stated that her husband wanted to go

abroad and the accused demanded Rs.9 lakhs for sending her husband to Georgia. She further stated that she gave Rs.6,50,000/- to accused from her house and she had never deposited this amount in the bank nor withdrawn this from the bank. She stated that she had kept this money for constructing her house and after this she did not construct her house. She further stated that she was present when her husband paid Rs.1 lakh and Rs.80,000/- to the accused. She further stated that the payment of Rs.80,000/- was given after one week of paying of Rs.1 lakh and remaining amount was paid after 15 days. She further stated that every time when the payments were made, the above named persons were present. She further stated that she does not know whenever the cheque Ex.C1 was filled by her husband and she does not know whether the cheque was signed by her husband. She further stated that Kuldeep Singh, Bikramjit Singh and Sangam Singh are all residents of her village Sukala. She further stated that the money was given to the accused in the evening but she does not know the time and the same can be told by her husband. She further stated that she does not how much amount was given to the accused in the presence of above named three persons. She further stated that the cheque was given to her on 02.01.2017. She stated that an amount of Rs.1 lakh was given to the accused for the first time in her presence but she does not remember the date and Rs.80,000/- was given to the accused for the second time. But she stated that she cannot recall the exact period after the first payment after which the amount was given to the accused and she does not know how much amount was given thereafter. She stated that the amount was given to the accused on Baisakhi of the year 2016 but she does not

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remember the amount. She further stated that she cannot tell when the cheque in question was given to her by the accused. She further stated that the money was given by her husband but the accused issued the cheque in her name. She voluntarily stated that earlier the bank account was in the name of her husband but he went abroad and the same was transferred in her name. She stated that she does not know if she had a joint account with her husband at the time when the cheque was given to her by the accused. She further stated that she cannot tell why her husband did not get the cheque in his name since he had given the money to the accused. She further stated that her husband used to ask the accused to return the money and she had never asked the accused to return the money. She denied rest of the suggestions of the learned counsel for the accused.

14. In his defence, the **accused Roop Basant Singh** got examined himself as **DW-1** and stated that the husband of the complainant, namely, Salwinder Singh is doing the work as a travel agent and he contacted the said Salwinder Singh for going abroad. For this purpose, Salwinder Singh demanded Rs.2 lakhs from him and he paid Rs 50,000/- to the Salwinder Singh in cash and it was agreed that the remaining amount will be paid after the visa and at that time Salwinder Singh took his blank signed cheque as security. He further deposed that Salwinder Singh failed to send him abroad and refused to return the said amount to him despite his repeated requests. He further stated that his original passport and other documents are still in the illegal custody of Salwinder Singh. He further deposed that Salwinder Singh through his wife Navjot Kaur presented the cheque by filling the amount and

filed false complaint against him in order to pressurize him to pay huge amount in an illegal manner. He further deposed that no amount is due or payable by him towards the complainant or her husband Salwinder Singh and he does not know complainant and had no dealing with her. **In his cross-examination**, he stated that his passport in the custody of Salwinder Singh and he handed over the passport in the year 2016. He further stated that he had never filed the complaint to the police for returning the passport. He further stated that he does not have any proof regarding the fact that Salwinder Singh was working as an agent to send people abroad and he does not know if Salwinder Singh had sent any other person abroad. He further stated that he had not filed any civil case for recovery against the complainant. He denied rest of the suggestion learned counsel for the complainant.

15. The complainant has alleged that the accused had taken an amount of Rs. 6,50,000/- from her for sending her husband to Gerogia but he failed to fulfill his commitment and accused issued the cheque in question in order to discharge his legal liability that is to return the amount received by him. The cheque in question Ex.C1 has been produced in original by the complainant and thus, she is a holder of cheque in due course. The accused has nowhere denied that the cheque Ex.C1 does not bear his signature and the cheque Ex.C1 has not been issued by him from account maintained by him. The complainant further proved that the said cheque was dishonoured vide memo Ex.C2 for reasons "Funds Insufficient" and she had sent a legal notice Ex.C3 to the accused and the accused had failed to make the payment

consequent thereto. Therefore, the ingredients of section 138 NI Act have been satisfied.

16. The point that now arises is with regard to whether the cheque in question was issued for the discharge of the legal debt or liability. Once, the ingredients of section 138 NI Act are satisfied, then the court is bound to raise the presumption under section 139 NI Act that the holder of the cheque received the same for discharge of the debt or liability. The provision is reproduced as under:-

“139. Presumption in favour of holder.- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability.”

17. Hence, the initial presumption is raised in favour of the complainant and against the accused that cheque Ex.C1 was received by the complainant for discharge of legal debt or liability. The onus to rebut the said presumption raised has now fallen upon the accused. It is for the accused to prove that he had not issued the cheque in question for discharging the legal debt or liability. It is a settled proposition of law that the accused has to rebut the presumption by way of preponderance of probabilities. It has been observed by the Hon’ble Apex Court in the case titled “*Rohitbhai Jivanlal Patel Vs. State of Gujarat*”, (2019(2) Civil Court Cases 0001 (SC)) as follows:

“16. On the aspects relating to preponderance of probabilities, the accused has to bring on record such facts and such

circumstances which may lead the Court to conclude either that the consideration did not exist or that its nonexistence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that the consideration did not exist. This Court has, time and again, emphasized that though there may not be sufficient negative evidence which could be brought on record by the accused to discharge his burden, yet mere denial would not fulfil the requirements of rebuttal as envisaged under section 118 and 139 of the NI Act.”

18. It is pertinent to note here that the accused has nowhere denied his signatures on the cheque in question Ex.C1. In fact, the accused in his statement under Section 313 Cr.P.C. he has simply stated that a false complaint has been registered against him by misusing his blank cheque. Therefore, the accused has neither denied his signatures on Ex.C1 nor disputed the issuance of the cheque. The learned counsel for the accused had argued that the cheque in question was taken by the husband of the complainant when the husband of the complainant got opened the bank account of the accused. He further argued that the accused does not know the complainant and no transaction of money as alleged by the complainant in her complaint had ever taken place. He further argued that the husband of the complainant had taken an amount of Rs.50,000/- from the accused and had also taken his visa and passport. In order to substantiate his argument, the learned counsel for the accused submitted that the complainant is relying upon the document, Mark A which is an application moved by the husband of

the complainant to the SSP Batala against the accused wherein it has been specifically submitted that the blank cheque bearing no. 207961 of account no.84730100050631 of Punjab Gramin Bank had been given by the accused to the husband of the complainant as security and thus it proves the plea of the accused that he had no dealing with the complainant as such. To counter this argument, the learned counsel for the complainant has argued that the said document, Mark A, is a photocopy document and as such is not reliable. It is to be seen that document, Mark A, has been placed on record in the evidence of the complainant and now she herself is denying the validity of the same on the basis of it being not proved as per the provision of law. Even if the document Mark A placed on record by the complainant is not read, still the version of the complainant is not fully established.

19. Further, the complainant has been constantly changing her stance in her cross-examination and is unable to give any consistent answer. To all the material questions regarding when and how much money has been advanced to the accused, she states that the same can be told by her husband. Further, there is a reference of three persons, namely, Sangam Singh, Kuldeep Singh and Bikramjit Singh of the village of the complainant in whose presence allegedly the money had been given to the accused. But the above-named persons have not been examined in order to prove that actually any money has been given to the accused by the complainant. Therefore, casting a doubt over the complainant's version.

20. Moreover, the complainant has been unable to explain as to why the cheque has been issued in her name and not in the name of her husband

when he had dealing with the accused. Furthermore, the complainant has been unable to explain whether she had joint account with her husband. Thus, by raising these contradictory version and evasive replies of the complainant, the accused has been successful in rebutting the presumption raised against him.

21. Thus, from the entire version brought on record by the accused goes on to prove the fact that the accused had not issued the cheque Ex.C1 in discharge of any legal liability. Therefore, the accused has been successful in rebutting the presumption raised against him as to the fact of the any legal liability over him towards the complainant.

22. Now, the onus of proving the existence of legal liability has fallen upon the complainant which she has failed to prove by leading any cogent evidence. It is thus proved that the accused does not owe any legal liability to pay the amount as alleged by the complainant in his complaint.

23. The accused by leading his evidence and through cross-examination of the complainant witness has been successful in rebutting the presumption of law raised against him and thus, the presumption under Section 139 NI Act against the accused stands rebutted. On the other hand, the complainant has failed to prove the onus that had fallen upon him with regard to the existence of any legal liability upon the accused towards him.

24. In view of the above findings, this Court is of the view that the presumption under Section 139 NI Act stands duly rebutted by the accused. The complainant has failed to prove the case against the accused beyond reasonable doubt and the only point of determination is decided in favour of the accused and against the complainant.

25. In view of the above discussion, this Court is of the view that accused Roop Basant Singh is not guilty of the offence under Section 138 NI Act and is hereby **acquitted** of the notice of accusation so framed against him. His bail bonds and surety bonds stands discharged. File be consigned to the Record Room after due compliance.

Pronounced in Open Court.
Dated:18.11.2023

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Mehak Puri, PCS,
Judicial Magistrate First Class
Batala (UID No. PB0582)

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Judicial Magistrate First Class, Batala. (UID No. PB0582).

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Present: Complainant in person with counsel Sh. R.S. Boparai, Advocate.
Accused Roop Basant Singh in person with counsel Sh. Manjit Singh, Advocate.

Today the case was fixed for arguments.

Arguments heard. Accused has been directed to furnish bail bonds under Section 437-A Cr.P.C. in the sum of Rs.30,000/- with one surety in the like amount. However, accused moved an application seeking permission to furnish personal bonds as the surety is not available today and requesting for time to furnish surety bonds under section 437-A Cr.P.C. In view of the request made, 10 days' time is given to the accused to furnish surety bonds. Personal bonds furnished which have been accepted or attested.

Vide my separate detailed judgment of even date, the accused has been acquitted of the notice of accusation framed against him. His bail bonds and surety bonds stands discharged. File be consigned to the Record Room after due compliance.

Pronounced in Open Court.

Dated:18.11.2023

Typed by: Mansi, Stenographer-III

**Mehak Puri, PCS,
Judicial Magistrate First Class
Batala (UID No. PB0582)**

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Present: Applicant Roop Basant Singh in person alongwith counsel Sh. Manjit Singh, Adv.

Papers taken up again on the application for permission to furnish bail bonds filed on behalf of applicant.

Requisite bail bonds under section 437-A Cr.P.C. furnished which have been accepted and attested. Papers be attached with the main file.

Pronounced in Open Court.

Dated:30.11.2023

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