

**In the Court of P. C. Rana, Additional Sessions Judge-1,
Mandi, District Mandi, Himachal Pradesh.**

CNR No.	:	HPMA01-004678-2022
Reqd. No.	:	181 of 2022
Criminal Appeal No	:	66 of 2022
Date of Institution	:	21-12-2022
Date of Registration	:	26-12-2022
Date of Decision	:	18-11-2023.

Mast Ram son of Sh. Sant Ram, r/o village Badain, Tehsil Nihari,
District Mandi, H.P., at present village Chakali, P.O. Slapper,
Tehsil Sundernagar, District Mandi, H.P.

....Appellant/accused.

Versus

1. Roop Lal s/o Sh. Bhikham Ram, r/o Village Ambedkar
Nagar, P.O. Bhojpur, Tehsil Sundernagar, District Mandi,
H.P.
2. State of H.P.

....Respondents.

**Appeal under Section 374 of the Code of
Criminal Procedure, 1973 against the
judgment of conviction dated 14-11-2022
and order of sentence dated 28-11-2022,
passed by learned Chief Judicial
Magistrate, Mandi, District Mandi, H.P., in
Complaint No.238-III/2019 [Reg. No.500/
2019] under Section 138 of the
Negotiable Instruments Act, titled as
'Roop Lal Versus Mast Ram', with prayer
to accept appeal.**

For appellant : Sh. Noor Ahmad, Ld. Advocate.
For respondent No.1 : Sh. Narender Chaudhary Ld. Adv.
For respondent No.2 : Sh. Mohinder Kumar, Ld. PP.

J U D G M E N T:-

1. Instant appeal has been preferred by the appellant impugned judgment of conviction, dated 14-11-2022 and order of sentence dated 28-11-2022 passed by the learned Chief Judicial Magistrate, Mandi, District Mandi, H.P., in Complaint No. 238-III/2019, (Reg. No.500/2019), under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the N. I. Act' for short), titled as 'Roop Lal Versus Mast Ram', whereby and where-under, the appellant/accused has been convicted for commission of offence punishable under Section 138 of the N. I. Act and he has been sentenced to undergo simple imprisonment for a period of six months and also ordered to pay fine in the sum of Rs.6,00,000/- (Rupees six lakhs only) to the complainant and in default of payment of fine the appellant shall further undergo simple imprisonment for a period of two months.

2. For convenience, the parties are hereinafter referred to as 'the complainant' and 'the accused', respectively, as they have been referred before the learned trial court and in the impugned judgment and order of sentence, passed by the Id. Trial court.

3. Facts of the case, as emerging from the record, are that on 4.6.2019, complainant has filed complaint u/s 138 of N.I. Act, with the averments that accused was having friendly relations with him and as such had taken an amount of Rs.5,25,000/- in cash from the complainant in the month of July, 2016 for the repayment of his bank loan and promised to return the said amount to the complainant in the month of March, 2018. But in the month of March, 2018, when the complainant demanded his money, then, accused gave reason of his weak financial position, sought some more time and further assured to pay the same in the month of April, 2019. The accused in order to

pay the said amount, has issued a cheque No. 003105 of Rs. 5,25,000/- to the complainant, dated 13-04-2019 of his bank account No.10673903105 drawn on State Bank of India, Branch Slapper, BBMB Colony, Tehsil Sundernagar, District Mandi, H.P. It is averred that the cheque was issued by the accused in order to discharge of his liability towards the complainant. Further, it is pleaded that complainant has presented the said cheque in the Canara Bank, Branch Mandi, H.P., for encashment on 17-04-2019 and it was sent to State Bank of Indian, Mandi branch Mandi, H.P., for collection, and returned dishonoured vide memo dated 18-04-2019 with the remarks “Funds insufficient”. It has also been pleaded that on the receipt of the information regarding the dishonouring of the cheque, the complainant served the accused with a registered legal notice dated 26-04-2019, however, despite serving of said notice on his correct address on dated 27-04-2019, neither paymeent is made nor reply is given. Necessary detail of the cheque, dishonour memo, etc are given hereunder:-

Cheque dated	13-04-2019
Dishonoured on	18-04-2019
Demand notice	26-04-2019
Status of legal notice	Delivered on 27-04-2019
Complaint filed on	04-06-2019.

4. Further it has also been pleaded that the accused intentionally and willfully issued the bogus cheque in favour of the complainant and the accused has committed fraud with the complainant and faced with such circumstances, instant complaint has been filed before the Id. Trial court on 04-06-2019.

5. The learned trial court vide order dated 11-06-2019 has taken cognizance of the offence against the accused and he was summoned for 03-08-2019. On appearance of accused, notice of accusation was put to him on 27-09-2019, to which,

accused denied the case of complainant and claimed trial and thereafter, complainant examined himself as CW-1 and thereafter, closed his evidence.

6. Statement of accused under Section 313 of the Code of Criminal Procedure, thereafter, is recorded wherein, incriminating material and evidence on record against accused put to him and he has denied the case of complainant in toto and claimed that he had not taken any money from the complainant and brother of the complainant has helped him in repaying his bank loan and cheque in question was given to the brother of complainant and not to the complainant. However, he intended to examine witnesses in his defence, but despite availing opportunities, failed to examine any witness in his defence and thereafter his defence is closed by Id. Trial court vide order dated 14.11.2022.

7. After going through the pleadings, record and evidence and hearing the learned counsels for the parties, learned trial court has convicted and sentenced the accused vide impugned judgment and order, as already stated, supra.

8. Feeling aggrieved against and dissatisfied with the impugned judgment of conviction and order of sentence passed by the Id. Trial Court, the instant appeal has been preferred by appellant/accused inter-alia on the ground that the judgment passed by the learned court below is not sustainable in the eyes of law, as such, liable to be set-aside. Further ground is taken that the impugned judgment is erroneous in the eyes of law, as it transpire from the judgment itself, that conviction under the aforesaid offence is not maintainable, in the eyes of law, hence, the impugned judgment is liable to be set aside. Further ground is taken the evidence is highly contradictory, not trustworthy, credible as such, the learned trial court has arrived at a wrong conclusion,

hence, the impugned judgment is liable to be set aside. Another ground is taken that the judgment of conviction and order of sentence are based on the surmises and conjectures and wrong conclusion were arrived at by the learned trial court. Another ground is taken that the court below has committed serious illegalities and material irregularities while passing the impugned judgment under appeal, as such, same are liable to be set aside. Further ground is taken that the impugned judgment of conviction and order of sentence are untenable and unsustainable in the eyes of law, facts and circumstances involved in the case, as such, are liable to be set aside. Another ground is taken that the lower court has miserably failed to adopt the basic principle of criminal law while delivering the impugned judgment. Even otherwise, the observation so made by the Id. Trial court are not only perverse but seems to be figment of imagination of Ld. Court below. Further ground is taken that the learned court below while convicting the appellant for the offence punishable under Section 138 of the Negotiable Instrument Act, whereas no offence at all is made out in view of the facts of the case. Another ground is taken that the appellant neither issued the cheque in favour of he respondent nor any transaction took place between the appellant and the respondent No.1 and there are material alteration in the cheque, as the date and figures of the cheque was different, the signatures and hand writings, as the cheque was misused by the respondent No.1/complainant. Further ground is taken that the complaint of the respondent No.1 is premature, but this fact is also ignored by the learned Court below, as such, the judgment under appeal is liable to be set aside. Another ground is taken that the judgment of the learned trial court is against the facts and law, hence, cannot be sustained in the eyes of law and prayed that the appeal be accepted by setting aside the impugned judgment of

conviction and order of sentence, by dismissing the compliant filed by the respondent No.1

9. Notice of this appeal was served on the respondent, who put in appearance before this court through his counsel Shri Narender Chaudhary, Advocate. In the mean time, record of the learned trial court was also requisitioned.

10. I have heard the learned counsels for the parties and gone through the record of the case with minute care.

11. From the arguments addressed by the learned counsels for the parties, the following points arise for determination:-

1. Whether the impugned judgment of conviction and order of sentence passed by the learned Chief Judicial Magistrate, Mandi, H.P., are sustainable in law?
2. Final order.

12. For the reasons to be recorded hereinafter my findings on the aforesaid points are as under:-

Point No.1 : Yes

Final order : Appeal is dismissed as per operative part of this judgment.

REASONS FOR FINDINGS

Point No.1:-

13. In order to prove its case, the complainant has examined himself as CW-1 and tendered his sworn affidavit Ext. CW-1/A in his examination-in-chief. He also tendered documents i.e., Cheque as Ext. CW-1/B, dishonourment memo as Ext. CW-1/C, legal notice as Ext. CW-1/D, postal receipt as Ext. CW-1/E and postal acknowledgment due as Ext. CW-1/F on the record. In his sworn affidavit, he has reiterated the pleadings taken in the

complaint, as such, the contents of the affidavit are not reproduced here for the sake of brevity and in order to avoid prolixity.

14. In his cross-examination, he has stated that he is working as class IV employee in the police department. Stated that he is posted since the year 1997. He knows the accused for the last many years. Cheque Ext. CW-1/B was given to him by the accused. Stated that the accused has demanded money from him but he does not remember as to for what purpose money was demanded by the accused. He denied the suggestion that there is no transaction between him and the accused. He denied that the amount on the cheque was filled by him. He denied the suggestion that false complaint has been filed by him against the accused.

15. The complainant, thereafter, closed his evidence vide separate statement of the learned counsel for the complainant placed on record.

16. Thereafter accused was examined under Section 313 of Cr.P.C., on 09-11-2021 wherein, incriminating material appearing on record put to him but accused denied the case of complainant by stating that he has not taken any amount from the complainant, and also stated that he had given the cheque to the brother of the complainant, who had helped him in repayment of bank loan.

17. Thereafter, opportunities were granted to accused to lead evidence in his defence, but the accused after availing sufficient opportunities failed to lead any evidence in his defence and ultimately the defence evidence was closed by the order of the Court vide order dated 14-11-2022.

18. This is the entire evidence brought on record by the parties to lis.

19. Careful perusal of the record i.e., Cheque Ext. CW-1/B reveals that it was issued on 13-04-2019 in the name of Complainant Roop Lal and bears signatures of accused Mast Ram and it was dishonoured vide memo Ext. CW-1/C dated 18-04-2019 with remarks "funds Insufficient", thereafter, legal notice Ext. CW-1/D dated 26-04-2019 was issued by the complainant through counsel and also corroborated by the postal receipt Ext. CW-1/E dated 26-04-2019 and it was duly received by the appellant / accused, as reflected from the postal acknowledgment due Ext. CW-1/F, which was duly received by the appellant accused and he failed to make the payment within stipulated period, hence, in view of the aforesaid circumstances, the instant complaint under section 138 of the N. I. Act was filed before the learned trial court on 04-06-2019, as such, the complaint is held to be filed within a period of limitation and is maintainable.

20. The case of the complaint is that the appellant accused has demanded Rs. 5,25,000/- in order to repay the loan amount taken from the bank and thereafter, in the month of March, 2018, when the complainant demanded his money back from the appellant/ accused, he has issued cheque in question to him in order to discharge the liability, however, the cheque was dishonoured with remarks "Funds Insufficient".

21. In order to prove the complaint the complainant has examined himself as CW-1 and tendered his sworn affidavit Ext. CW-1/A in examination-in-chief and has reiterated the contents of the complaint. He has been cross examined wherein no defence whatsoever has been taken by the appellant/accused. No suggestion whatsoever has been given to the complainant. It is only stated by the complainant in his cross examination that he is

not aware as to for what purpose the money was taken by the accused from him. Thereafter the evidence on behalf of the complainant was closed. However, when the accused was examined under Section 313 of the Code of Criminal Procedure, he has taken the defence that he has not borrowed any money from the complainant, but borrowed money from the brother of the complainant, who had helped him in repaying the bank loan amount. Further he had intended to lead evidence in his defence, but despite availing sufficient opportunities the appellant/accused had not lead any evidence in his defence and ultimately opportunity to lead any evidence in his defence was closed by the order of the Court.

22. There is apparent contradiction in the defence taken by the appellant/accused in the statement recorded under Section 313 of the Code of Criminal Procedure, wherein it is claimed that the appellant/ accused has borrowed money from the brother of the complainant and not from the complainant, whereas, no such question was put to the complainant, when he himself appeared in the witness box as CW-1. Further only one suggestion was put to the complaint that the amount was filled by himself in the cheque in question. Even though, it is assumed that the amount in question is filled by the complainant in the Cheque Ext. CW-1/B himself, then also it does not absolve the appellant/ accused from the liability. Once he has not disputed the liability including his signature in the cheque in question, there is nothing on record to rebut the presumption, which has been raised against him.

23. The accused has failed to prove on the record even by way of preponderance of probabilities that he has already repaid the amount to the brother of the complaint and not borrowed any amount from the complainant. Brother of complainant has not been examined to prove and substantiate his defence on record. Keeping in view intent and purpose of Section 20 of the N. I. Act,

the complainant or for that matter, holder in due course of instrument, is competent to fill inchoate instruments and no fault could be found in this regard.

24. I have gone through judgment passed by learned trial court and there is no infirmity or illegality in judgment of conviction and order of sentence passed by the learned trial court and the learned trial court has given cogent reasons for justifying the conviction and sentence of the accused. Thus, in view of the above discussion, judgment of conviction and order of sentence passed by the learned Trial Court are liable to be maintained, affirmed and upheld. Hence, the point No.1 is answered accordingly and it is decided in affirmative.

25. Before parting, perusal of order of sentence passed by Id. Trial court reveals that Id. Trial court has imposed sentence of Two months in default of making payment of fine and accused has been sentenced u/s 138 of N.I. Act for Six months, as such, the default sentence imposed on the appellant/accused is not in consonance with the settled law i.e., it cannot be more than 1/4th of the substantial sentence, hence, said part of the order is not sustainable, as such, is set-aside and modified and appellant/accused is **sentenced in default of making payment of fine to undergo S.I. for one month** and in aforesaid terms, order of sentence is modified.

26. No other ground is argued or pressed.

FINAL ORDER:

27. In view of aforesaid finding on point No.1, the appeal of the appellant/accused is hereby dismissed and consequently, judgment of conviction dated 14-11-2022 passed by the learned Chief Judicial Magistrate Mandi, District Mandi, H.P., in Complaint registration No.500/ 2019, under Section 138 of the Negotiable Instruments Act, titled as 'Roop Lal Vs. Mast Ram,' is hereby maintained, affirmed and upheld, however, order of sentence

dated 28.11.2022 is modified and appellant/accused is sentenced in default of making payment of fine to undergo S.I. for one month.

28. The convict/accused shall surrender before the learned trial court and in the event of failure of the convict to surrender before the learned trial court to suffer the sentence of imprisonment, the learned trial court shall take coercive measures for execution of the sentence.

29. The record of the learned trial court along with an authenticated copy of this judgment be returned and the appeal file, be consigned to the record room, after due completion.

Announced and signed in the Open Court on this 18th day of November, 2023.

(P. C. Rana)
Additional Sessions Judge-I,
Mandi, District Mandi, H.P.

/RS/