

Tule Ram Vs Ramneek Singh
CNR No. HPKU-01-0033212022
CIS Case Type: Criminal appeal.
CIS Case No.127 of 2022 (Reg.No.62 of 2022)
CIS Case Year: 2022

In the Court of Harish Sharma Additional Sessions Judge, Kullu, District Kullu (Himachal Pradesh).

Criminal Appeal No. :62 of 2022.
Registration No. :127 of 2022.
Date of presentation :17.12.2022.
Date of institution :19.12.2022.
Date of decision :21.03.2023.

Tule Ram aged 41 years son of Sh. Nirat Ram, r/o village and Post Office Burua, Tehsil Manali District Kullu, HP.

..... Appellant.

Versus

Sh. Ramneek Singh son of Sh. Kulwant Singh, r/o village Dhaunta, P.O. Beh, Tehsil Dehra, District Kangra, HP at present care of Sh. Naveen Tanwar Gompa Road Manali, Tehsil Manali, District Kullu, HP.

..... Respondent.

Criminal Appeal under Section 374 Cr.P.C. against the judgment of conviction dated 16.11.2022 and order of sentence dated 18.11.2022, passed by learned Judicial Magistrate First Class, Manali, District Kullu, HP in Criminal Complaint No. 581 of 2019, titled as Ramneek Singh versus Tule Ram”.

For appellant : Sh.Parma Nand, Id. Advocate.

For respondent : Sh. Vikrant Thakur, Advocate.

JUDGMENT:

The present appeal has been filed by the appellant against the judgment of conviction dated

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16.11.2022 and order of sentence dated 18.11.2022, passed by learned Judicial Magistrate First Class, Manali, District Kullu, HP in Criminal Complaint No. 581 of 2019, titled as Ramneek Singh versus Tule Ram”, vide which the appellant (accused before learned trial Court) was convicted and sentenced as follows:-

Offence u/s	Imprisonment	Compensation
138 of the Simple Negotiable Instruments Act	imprisonment for a period of one year	Rs.3,00,000/-

2. For convenience sake, the appellant and the respondent are hereinafter referred to be as the accused and the complainant respectively as referred in the judgment of the learned trial court.

3. The brief facts of the case are that the parties are having good terms with each other. The accused borrowed a sum of Rs. 2,00,000/- from the complainant in the month of July,2018 to meet his domestic and business expenditure. The accused assured the complainant to return the said amount on demand.

4. On demand, the accused in order to discharge his liability issued and handed over a duly signed cheque No. 377711 dated 22.01.2019 amounting to Rs.2,00,000/- in favour of the complainant. The cheque on presentation was

dishonoured with the remarks “Insufficient Funds” vide memo dated 25.02.2019. Thereafter, the complainant sent legal notice dated 0103.2019 to the accused, but despite receipt of the notice, the accused failed to pay the cheque amount and as such, the complaint was filed against the accused before learned trial Court.

5. Thereafter on the preliminary evidence, the Id. Trial Court took cognizance of the offence and issued notice to the appellant.

6. On his appearance, the notice of accusation was put to the accused to which, he pleaded not guilty and claimed trial.

7. The complainant, in order to prove his case, examined himself as CW-1, produced documentary evidence and closed his evidence. Statement of accused under Section 313, Cr.P.C. was also recorded and incriminating evidence was put to the accused. The accused preferred to lead defence evidence, but failed to adduce the same.

8. After hearing both the parties, Ld. trial Court allowed the complaint and convicted the accused for the offence under Section 138 of N.I.Act. The accused was sentenced to undergo simple imprisonment for one year. He is also ordered to pay compensation to the complainant in the sum of Rs.3,00,000/- (Rs. three lac only).

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9. It is against the judgment and order, the present appeal has been preferred. The main grounds of the appeal are that the wrong judgment and order have been passed by the learned trial Court.

10. Notice of appeal was issued to the complainant and he has put his appearance through his counsel. During the course of hearing the record from the learned trial Court was also requisitioned. Matter was heard on merits.

11. The following points arise for determination in this appeal:-

1. Whether the judgment of conviction dated 16.11.2022 and order of sentence dated 18.11.2022 passed by the learned trial Court, are not legally and factually sustainable in the eyes of law?

2. Final order.

12. For the reasons to be recorded hereinafter while discussing the points for determination my findings on these points are as under:-

Point No.1 No

Final order The appeal is dismissed per operative part of the judgment.

“REASONS FOR FINDINGS”

POINT NO.1:

13. The learned counsel for the appellant/accused argued that wrong judgment and order of sentence has been passed by the learned trial Court, which is not sustainable in the eyes of law and liable to set aside. The evidence has not been appreciated in the proper perspective and the findings of the learned trial Court are perverse. The learned trial Court has not taken into account the defence of the accused. If the defence of the accused has been taken into account the complaint would have been dismissed by the learned trial Court.

14. The learned counsel for the complainant on the other hand argued that reasoned judgment has been passed by the Id. Trial Court and there is nothing perverse in in the judgment. The learned trial Court has arrived at correct conclusion and the appeal is liable to be dismissed.

15. In order to prove the allegations made by the complainant in the complaint, complainant (CW-1) by way of affidavit Ext. CW-1/A deposed that the accused is in good terms with him. To meet the domestic and business expenses the accused approached him and borrowed a sum of RS.2,00,000/- in the month of July, 2018. In order to discharge the liability, the accused issued cheque No.377711 dated 22.01.2019 Ext. CW-1/B amounting to Rs. 2,00,000/- drawn on Punjab and Sindh Bank, Branch Manali. This cheque when presented for encashment by him, the same was

dishonoured and returned to him alongwith cheque and memo of dishonour Ext. CW-1/C with the remarks funds insufficient. Thereafter a legal notice Ext. CW-1/D through postal receipt Ext. PW-1/E was sent to the accused. When no payment was made to him, a complaint under Section 138, N.I.Act was preferred against the accused.

16. The complainant has examined himself only and has led no other evidence in his behalf and take the benefit of Section 146 of N.I.Act. So, the conjoint reading of oral evidence as well as documentary evidence led by the complainant presumption under Section 118 of N.I. Act is raised against the accused. It is further worthwhile to point out that the accused has not denied the issuance of cheque as well as his signature over the same and taken the defence of security. Thus, presumption under Section 139 of N.I. Act is also raised against the accused.

17. In **Bir Singh Vs. Mukesh Kumar 2019 4 SCC 197**, the Hon'ble Supreme Court in Paras 37,38 and 40 of the judgment has observed that

37. "A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20,87 and 138, makes it amply clear that a person who signs the cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque has been issued for payment of debt or in discharge of a liability. It is immaterial that the cheque may have

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been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 of N.I. Act would be attracted.

38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not available the cheque. The onus still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.

39.....

40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment would attract presumption under Section 139 of N.I. Act in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”

18. If this be the case, the accused is required to rebut the same. It may again be pointed out that the nature of presumptions envisaged under Sections 118 and 139 of N.I. Act are in the nature of “shall presume” and this expression has been defined in the Indian Evidence Act. Section 4 the Indian Evidence Act provides as under:-

“Shall presume”:- Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

19. What it means that what is provided under Sections 118 and 139 of the Act, shall be taken as proved unless disproved by the accused.

20. To disprove the case, it is not necessary that the accused should enter into the witness box and onus borne by the accused to disprove the evidence is governed by probability of preponderance. However, mere denial in statement under Section 313, Cr.P.C. is not sufficient.

21. In the present case, the accused has not led any evidence in his defence despite availing numerous opportunities. Ultimately vide his separate statement, closed his evidence. So, there is nothing on record other than cross-examination of complainant, which is to be scrutinized in order to find out whether a case under Section 138 of the N.I. Act is made out or not. From the cross-examination it is discernible that the case of the accused is that the loan transaction is only of Rs. 40,000/-. Further it is the case of the accused that he has issued security cheque, which was misused by him by filling wrong amount. In the cross-examination of the complainant, nothing has come out favouring the accused. Only suggestions have been put, which are denied. There is no proof of suggestions. Suggestions by itself do not have any value and particularly when they are denied. So, there is nothing on record to believe the accused that cheque was misused by the complainant, which was issued for security.

22. So far as the defence of security is concerned, that is also not made out from the record. The accused himself in

the cross-examination suggested that he had liability of Rs.40,000/- towards the complainant. By admitting this fact, the accused has admitted his liability, thus question of security cheque does not arise in such a case. There was subsisting liability and cheque was issued for the same. Even the cheque which was issued as security can on maturity if presented, attracts the liability under Section 138 of the N.I. Act. The other part of his defence that the cheque was misused by the complainant has not been proved on record.

23. Even if it is assumed that cheque was issued for security, but it has been pointed out by the Hon'ble Supreme Court of India that a cheque issued for security pursuant to financial transaction cannot be considered as of worthless piece of paper under every circumstance, if there is liability and on the maturity of cheque, the same was presented for encashment and on its dishonour, the provisions of Section 138 of N.I. Act are applicable in such a case (**Sripati Singh Vs. State of Jharkhand Cr. Appeal No. 1269-1270 of 2021**).

24. Further, the compensation of Rs.3,00,000/-(Rs. three lac only) is also not excessive. The cheque was issued in the year 2019 for Rs.2,00,000/-(Rs. Two lac only). The judgment was announced by the learned trial Court on 16.11.2022. The complainant had lost interest on the cheque amount and as such, the complainant was entitled to be

compensated. It was laid down by the **Hon'ble Supreme Court in M/S Kalamani Tex and another Versus P. Balasubramanian JT 2021(2) SC 519** that the Courts should uniformly levy a fine up to twice the cheque amount alongwith simple interest at the rate of 9% per annum. It was observed:

“20. As regards the claim of the compensation raised on behalf of the respondent, we are conscious of the settled principles that the object of chapter XVII of the NIA is not only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for dishonour of cheque as well as civil liability for realization of the cheque amount. It is also well settled that there needs to be consistent approach towards awarding compensation and unless there is exists special circumstances, the Courts should uniformly levy a fine up to twice the cheque amount alongwith simple interest at the rate of 9% per annum(R.Vijan v. Baby, (2012)1 SCC 260, 20).

25. Hence, no interference is required with the amount of Rs. 3,00,000/- imposed by the learned trial Court as compensation upon the accused. Hence, point under discussion is decided against the appellant/ accused and answered accordingly.

26. No other point has been argued before me.

FINAL ORDER:

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27. Hence, in view of my discussions and findings on point No.1 above, the present appeal fails and the same is dismissed. The impugned judgment of conviction and order of sentence are upheld and affirmed. The accused is directed to surrender before the Id. trial Court on 22nd day of April, 2023 to undergo the aforesaid sentence. The bail bonds furnished by the accused during the appeal are extended for further six months in compliance of Section 437-A, Cr.P.C. The record of the Id. trial court along with the copy of this judgment be sent back and the file of this court after due completion be consigned to the record room.

Announced in the open Court today this 21st day of March, 2023 in the presence of the learned counsel for the parties.

TR

(Harish Sharma)
Addl. Sessions Judge,
Kullu, District Kullu,HP.

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21.03.2023: Present:Sh. Parma Nand, Id. Advocate for the
appellant.

Sh. Vikrant Thakur Id. Advocate for the
respondent.

Vide my separate judgment of even date
placed on the file, the present appeal fails and the same is
dismissed. The impugned judgment of conviction and order
of sentence are upheld and affirmed. The record of the Id.
trial court along with the copy of this judgment be sent back
and the file of this court after due completion be consigned
to the record room.

Announced:
21.03.2023

(Harish Sharma)
Addl. Sessions Judge,
Kullu, District Kullu,HP.

TR