

Jagat Ram vs Gopal Krishan
CNR No. HPKU-01-00__22022
CIS Case Type: Criminal appeal.
CIS Case No.104 of 2022 (Reg.No.50 of 2022)
CIS Case Year: 2022

In the Court of Rajinder Kumar, Additional Sessions Judge, Kullu, District Kullu (Himachal Pradesh).

Criminal Appeal No. :50 of 2022.
Registration No. :104 of 2022.
Date of presentation :13.10.2022.
Date of institution :14.10.2022.
Date of decision :19.01.2023.

Jagat Ram son of Sh. Lobhu Ram,r/o village Bogi, P.O. Mohal, Tehsil Bhuntar, District Kullu, HP.

..... Appellant.

Versus

Gopal Krishan son of Sh. Nanak Chand,r/o village Siyal P.O. and Tehsil Manali, District Kullu, HP.

..... Respondent.

Criminal Appeal under Section 374 Cr.P.C. against the judgment of conviction and order of sentence dated 13.09.2022, passed by learned Judicial Magistrate First Class, Manali District Kullu, HP in Criminal Complaint No. 186 of 2017 (CIS filing No. 409 of 2017), titled as “Gopal Krishan Versus Jagat Ram”.

For appellant : Sh. R.D.Rathor, Id. Advocate.

For respondent : Sh. Bishan Singh, Id. Advocate.

JUDGMENT:

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 13.09.2022, passed by learned Judicial Magistrate First Class, Manali District Kullu, HP in Criminal

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Complaint No. 186 of 2017 (CIS filing No. 409 of 2017), titled as “Gopal Krishan Versus Jagat Ram”, vide which the appellant (accused before learned trial Court) was convicted and sentenced as follows:-

Offence u/s	Imprisonment	Compensation
138 of the Negotiable Instruments Act	Simple imprisonment for a period of six months.	Rs.4,20,000/- and in default of payment of compensation, to undergo simple imprisonment for one month.

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. Briefly the facts giving rise to the present appeal are that the complainant and the accused are well known to each other having good friendly relations. The accused had borrowed a sum of Rs.2,80,000/- from the complainant with the assurance that the would repay the same very soon. On demand by the complainant, the accused in order to discharge his liability, had issued and hand over a cheque bearing No. 074503 dated 20.06.2017 for a sum of Rs.2,80,000/- drawn at State Bank of Patiala Branch Sarwari

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Bazaar, Kullu,HP in favour of the complainant. The cheque on presentation was dishonoured with the remarks “Insufficient funds” vide memo dated 20.06.2017. Thereafter, the complainant sent legal notice dated 10.07.2017 to the accused, but despite receipt of the notice, the accused has failed to pay the cheque amount and as such, the complaint was filed before Id. trial Court.

4. The Id. trial Court, on finding sufficient reasons for summoning the accused for the commission of offence punishable under Section 138 of the NI Act, summoned the accused, who appeared and notice of accusation was put to him for the commission of offence punishable under Section 138 of the NI Act. The accused pleaded not guilty and claimed to be tried.

5. The complainant, in order to prove his case, examined himself as CW-1, produced documentary evidence and closed his evidence. The accused, in his statement recorded under Section 313 Cr.P.C., had denied all the incriminating evidence led against him and pleaded innocence. The accused despite availing opportunity did not lead any evidence in his defence.

6. The learned trial Court, on the conclusion of the trial, found that the version of the complainant that accused had issued the cheque in discharge of his legal liability, was duly proved. It was also proved that cheque was dishonoured

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with the remarks “Insufficient Funds” and that a notice was issued to the accused. The accused failed to probabilize his defence and stands convicted.

7. Aggrieved by and dissatisfied with the judgment of conviction and order of sentence passed by learned trial Court, the present appeal has been filed by the accused on the ground that the learned trial Court has not taken into consideration the facts and evidence of the case and a different case has been made out in favour of the complainant and against the accused. The evidence led by the complainant is weak and conflicting and as such, the learned trial Court has arrived at wrong conclusion. It has been submitted that the judgment of conviction and order of sentence are based upon mere surmises and conjures. Therefore, it is prayed that the judgment/order passed by the learned trial Court be set aside and the accused may be acquitted.

8. Notice of appeal was issued to the complainant/respondent and the complainant appeared in the Court to contest the appeal. The record of the learned trial court was also requisitioned for the perusal of this court and matter was heard on merits.

9. I have given my thoughtful consideration to the submissions made on behalf of the appellant/accused and the respondent/ complainant and have gone through the

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record of this case and have also perused the entire oral and documentary evidence adduced by the parties. I have also gone through the judgment of learned trial Court.

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

1. Whether the judgment of conviction and order of sentence dated 13.09.2022 passed by the learned trial Court, are not legally and factually sustainable in the eyes of law?

2. Final order.

11. 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:

12. The learned counsel for the appellant/accused has vehemently argued that the accused never issued the cheque in question in favour of the complainant and the cheque in question was issued by the accused in favour of one Muni Lal as security qua the sale of the land and as such, the cheque has been misused, therefore, prayed for setting aside

the impugned judgment after acceptance of the present appeal.

13. On the other hand, the learned counsel for the complainant has argued that the complainant by leading cogent and convincing evidence on record, has proved his case and as such, the learned trial Court has rightly convicted and sentenced the accused for the offence under Section 138, NI Act and prayed for dismissal of the appeal.

14. It is settled proposition of law that to establish the offence under Section 138 of the N.I. Act against the accused, the complainant must prove the following things:-

- (i) the accused issued a cheque of an account maintained by him with a bank.
- (ii) the said cheque has been issued in discharge, in whole or in part, of any legal debt or other liability, which is legally enforceable.
- (iii) the said cheque has been presented to the bank within a period of three months from the date of cheque or within a period of its validity.
- (iv) the aforesaid cheque, when presented for encashment, was returned unpaid/ dishonoured
- (v) the payee of the cheque issued a legal notice of demand to the drawer within 30 days from the receipt of information by him from the bank regarding return of the cheque.
- (vi) the drawer of the cheque failed to make the payment within 15 days of the receipt of aforesaid legal notice of demand.

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15. Complainant Gopal Krishan with a view of prove his case stepped into the witness box as CW-1 and filed his affidavit Ext. CW-1/A in support of his examination-in-chief wherein he has reiterated and reasserted all the averments made in complaint. He has specifically maintained that the accused borrowed a sum of Res.2,80,000/- from him with the assurance to pay the same to him very soon. When he demanded back the amount from the accused, the accused handed over cheque No.074503 dated 20.06.2017 Ext. CW-1/B for a sum of Rs. 2,80,000/- to the complainant in order to discharge his such liability towards the complainant. He further maintained that he presented the aforesaid cheque in the bank for encashment, but the same was dishonoured due to Funds Insufficient vide dishonour memo dated 20.06.2017 Ext. CW-1/C. After dishonour of the cheque, he issued legal notice dated 10.07.2017 Ext. CW-1/D demanding the cheque amount from the accused vide postal receipt Ext. CW-1/E, but despite receipt of the notice vide AD Ext. CW-1/F, the accused neither replied the notice nor made payment.

16. The accused has taken specific defence while recording his statement under Section 313, Cr.P.C. that an agreement was executed between one Muni Lal and Ram Dyal for sale and purchase of some land and he was witness to that agreement and he issued this cheque in favour of Muni Lal as security on his assurance that after taking the possession of the land, he will return the same and that

complainant has filed this complaint at the instance of Muni Lal.

17. During his cross-examination the complainant has feigned ignorance qua execution of any agreement between Ram Dyal and Muni Lal which was alleged to be witnessed by one Bhola Ram and the accused. Complainant has specifically denied that the accused issued blank security cheque in favour of Muni Lal.

In order to substantiate his such defence, the accused has not adduced any evidence worth name to show that he had issued the cheque in question in favour of one Muni Lal and not to the complainant and complainant has misused this cheque at the instance of Muni Lal. No any agreement alleged to have been executed between Ram Dyal and Muni Lal in which the accused was witness produced in the Court . The accused has not examined aforesaid Muni Lal to prove that he has handed over the cheque to Muni Lal as security and how it came to the hands of complainant and misused by filing the present complaint.

18. Not only this but till date the accused has not initiated any action against said Muni Lal or the present complainant for misusing his cheque.

19. Admittedly accused received legal notice issued by the complainant and this fact has also been duly proved on record. Had there been any ring of truth in the defence so

taken by the accused, he should have file reply to such legal notice explaining all these facts raised in his defence, but by not doing so, it shows that the defence so raised on behalf of the accused is without any basis.

20. As stated supra, the accused has not denied issuance of the cheque, which bears the signature of the accused and the accused has admitted his signature thereon. It was laid down by **Hon'ble High Court in Naresh Verma vs. Narinder Chauhan 2020(1) Shim. L.C. 398** that where the accused had admitted his signatures on the cheque, the Court has to presume that it was issued in discharge of legal liability and the burden would shift upon the accused to rebut the presumption.

21. Once the issuance of cheque and signatures thereupon are not denied, presumption starts in favour of holder of the cheque and once such presumption starts, onus shifts upon the person issuing the cheque,(Reliance in this regard is placed upon judgment rendered by the **Hon'ble Apex Court in Rohitbhai Jivanlal Patel v. State of Gujarat (2019) 18 SCC 106**, wherein it has been held as under:-

“18. In the case at hand, even after purportedly drawing the presumption under Section 139 of the NI Act, the trial Court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant

witnesses who allegedly extended him money for advancing it to the accused. This approach of the trial Court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the accused-appellant. The aspect relevant for consideration had been as to whether the accused-appellant has brought on record such facts/ material/ circumstances which could be of a reasonable probable defence.

19. In order to discharge his burden, the accused put forward the defence that in fact, he had the monetary transaction with the said Sh. Jagdishbhai and not with the complainant. In view of such a plea of the accused-appellant, the question for consideration is as to whether the accused appellant has shown a reasonable probability of existence of any transaction with Sh. Jagdishbhai? In this regard, significant it is to notice that apart from making certain suggestions in the cross-examination, the accused-appellant has not adduced any documentary evidence to satisfy even primarily that there had been some monetary transaction of himself with Sh. Jagdishbhai. Of course, one of the allegations of the appellant is that the said stamp paper was given to Sh. Jagdishbhai and another fact relied upon is that Sh. Jagdishbhai had signed on the stamp proper in question and not the complainant”.

22. The contention of the learned counsel that the accused has issued the cheque Ext. CW-1/B as security in favour of Muni Lal with the assurance that after the delivery

of possession, he will return the same, which has been misused, can not be accepted because as stated supra there is no iota of evidence to prove such stand of accused. As stated supra, the accused has not initiated any action against complainant till today qua misusing his cheque. Moreover, cheque bears the signature of the accused and the accused has admitted his signature thereon. It was laid down by **Hon'ble High Court in Naresh Verma vs. Narinder Chauhan 2020(1) Shim. L.C. 398** that where the accused had admitted his signatures on the cheque, the Court has to presume that it was issued in discharge of legal liability and the burden would shift upon the accused to rebut the presumption.

23. Having scanned the evidence available on record, this Court is convinced and satisfied that complainant has successfully proved by leading cogent and convincing evidence that the accused issued cheque in question in discharge of his lawful liability, but the same came to be dishonoured. Since despite issuance of legal notice, the accused failed to make good the payment, the learned trial Court, in the totality of the evidence led on record by the complainant, rightly held the accused guilty of having committed offence punishable under Section 138, the NI Act and as such, no interference in the impugned judgment/ order of conviction and sentence is called for.

24. The compensation of Rs.4,20,000/-(Rs. Four lac and twenty thousand only) is also not excessive. The cheque was issued in the year 2017 for Rs. 2,80,000/- The judgment was announced by the learned trial Court on 13.09.2022. The complainant had spent money and had lost interest on the cheque amount and as such, he 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. 4,20,000/- imposed by the learned trial Court as compensation upon the accused. Hence, point under

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discussion is decided against the appellant/ accused and answered accordingly.

26. No other point has been argued before me.

FINAL ORDER:

27. Hence, in view of my discussions and findings on point No.1 above, the present appeal is dismissed and the judgment of conviction and order of sentence dated 13.09.2022, passed by learned Judicial Magistrate First Class, Manali District Kullu, HP in Criminal Complaint No. 186 of 2017 (CIS filing No. 409 of 2017), titled as “Gopal Krishan Versus Jagat Ram” are upheld and affirmed. The accused is directed to surrender before the Id. trial Court on 20th day of February, 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 19th day of January, 2023 in the presence of the learned counsel for the parties.

TR

(Rajinder Kumar)
Addl. Sessions Judge,
Kullu, District Kullu,HP.