



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

110

CRM-A-1351-MA-2016 (O&M)

Date of decision: 24.01.2025

Hoshiar Singh

...Petitioner

V/s

Ajit Saini

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr.P.S.Jammu, Advocate with
Mr.Anirudh Malhan, Advocate, for the appellant.

Mr.Amandeep Vashisth, Advocate,
for the respondent.

MANJARI NEHRU KAUL, J. (ORAL)

1. The appellant-complainant (hereinafter referred to as the complainant) has challenged the judgment dated 08.10.2015, passed by the learned Judicial Magistrate Ist Class, Jind, whereby the respondent-accused (hereinafter referred to as the accused) was acquitted of the charges framed against him under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act').

2. As per the allegations in the complaint, the accused borrowed a sum of Rs.9,15,000/- from the complainant in January 2011 with the promise to repay the same. Upon his failure to do so, the accused issued a cheque bearing No.12419698 dated 20th of April 2011 for Rs.9,15,000/-, drawn on the Jammu and Kashmir Bank Ltd. Hissar. However, when the complainant presented the cheque for encashment, it was dishonoured and returned with a return memo dated 21st of September 2011. Consequently



the complainant issued a legal notice dated 15th of October 2011, calling upon the accused to make the payment. Despite this, the accused failed to comply.

3. The trial Court, after examining the evidence and material on record, acquitted the accused, holding that the complainant had failed to substantiate his case. Specifically, the trial Court observed that no credible evidence was produced to establish that the cheque in question was issued by the accused in discharge of any legally enforceable debt or liability.

4. Learned counsel for the appellant-complainant has reiterated the allegations set-forth in the complaint, asserting that the accused had borrowed Rs.9,15,000/-, in discharge of his legal liability, issued the cheque in question. It was argued that the trial Court failed to appreciate the presumption under Section 139 of the NI Act, which arises when the accused admits to having signed the cheque. Learned counsel emphasized that the accused neither rebutted this presumption with cogent evidence nor explained how the cheque came into the possession of the complainant.

5. It was further contended by the learned counsel that the accused did not take any steps to demand the return of the cheque, which substantiates the claim of the complainant that it was issued for repayment of a debt.

6. Per contra, learned counsel for the respondent vehemently opposed the submissions of the complainant. It was argued that the learned trial Court rightly acquitted the accused, as the complainant failed to prove his case. Counsel for the respondent submitted that the complainant had



neither provided any documentary evidence to establish the source of the alleged loan nor substantiated the claim with corroborative evidence, such as eyewitness testimony or proof of advancement of the loan.

7. I have heard learned counsel for the parties and have perused the relevant material placed on record.

8. Admittedly, the complainant failed to produce any documentary evidence or proof to substantiate the existence of a legally enforceable debt or liability for which the cheque was allegedly issued.

9. The complainant merely stated that the cheque was issued in discharge of an existing legal liability without providing specifics regarding the nature, origin or timing of the liability. There was no evidence of when the alleged loan was demanded, when it was advanced, or for what purpose it was given.

10. No eyewitness was examined by the complainant to corroborate the alleged loan transaction. The complainant also failed to explain the manner in which the loan was advanced.

11. While Section 139 of NI Act raises a presumption that a dishonoured cheque was issued in discharge of a debt or liability, this presumption is limited to the existence of the cheque itself. The complainant still bears the burden of proving that the debt or liability was legally enforceable.

12. In the present case, the complainant did not provide sufficient evidence to establish that the cheque was issued for a valid consideration to discharge a legally enforceable debt.



13. The trial Court rightly observed that merely presenting a cheque does not, in itself constitute an offence under Section 138 of the NI Act. The complainant must also prove that the cheque was issued in discharge of a legally enforceable debt or liability. The absence of any documentary evidence, corroborative testimony, all details about the alleged transaction significantly undermined the case of the complainant.

14. In view of the foregoing, this Court concurs with the findings of the learned trial Court that the complainant has failed to prove that the cheque in question was issued in discharge of a legally enforceable debt or liability. Accordingly the impugned judgment does not warrant any interference and the instant appeal is hereby dismissed.

January 24, 2025
poonam

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No