

(2013) 07 P&amp;H CK 0889

**High Court Of Punjab And Haryana At Chandigarh****Case No:** C.R.M. Appeal No. 794-SBA of 2000 (O and M)

Yadwinder Singh

APPELLANT

Vs

Raj Kumar Anand

RESPONDENT

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**Date of Decision:** July 30, 2013**Citation:** (2014) 1 BC 339 : (2014) 1 Crimes 164**Hon'ble Judges:** K.C. Puri, J**Bench:** Single Bench**Advocate:** Gaganpreet Kaur, for Mr. B.R. Mahajan, for the Appellant; Jagahar Singh, for the Respondent

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**Judgement**

K.C. Puri, J.

Challenge in this appeal is the judgment dated 10.2.2000 passed by Mrs. Manjot Kaur, Judicial Magistrate 1st Class, Amritsar vide which the accused now respondent has been acquitted u/s 138 of the Negotiable Instruments Act (in short - the Act). Briefly stated the case of the complainant is that accused as proprietor of M/s. Raj Food Industries issued seven cheques drawn on his banker State Bank of India, Dhab Wasti Rani, Amritsar amounting to Rs. 1,06,250/- as detailed in the impugned judgment. The accused also issued another cheque drawn on his banker Canara Bank, Gopal Nagar, Amritsar bearing No. 1803150 dated 28.6.1996 for a sum of Rs. 26,250/- in favour of the complainant towards the repayment of the loan taken by the accused from the complainant. On presentation of all the cheques issued by the accused, these were dishonoured on account of insufficiency of funds in the account of the accused. Thereafter, a notice dated 26.8.1996 was served upon the accused through registered post calling upon him to make the payment of the amount covered by the afore-referred cheques within the stipulated period of fifteen days but the accused failed to make the payment. Hence the complaint.

2. After recording preliminary evidence, the trial Court summoned the accused to stand trial u/s 138 of the Act.

3. On appearance of the accused-respondent, notice u/s 138 of the Act was served upon him to which he pleaded not guilty and claimed trial.
4. To prove its case, complainant examined as many as four witnesses. The trial Court after recording evidence of the complainant after serving notice u/s 138 of the Act recorded statement u/s 313 of the Code of Criminal Procedure (in short - the Cr.P.C.). The accused-respondent denied the allegations levelled against him. In defence, he examined Inder Mohan Wadhwa DW-1, Chander Sheikhar DW-2 and himself appeared as his own witness as DW-3, Ranjit Kaur DW-4 and closed the same.
5. The trial Court after hearing the learned counsel for the parties, acquitted the accused-respondent after giving him benefit of doubt vide judgment dated 10.2.2000.
6. Feeling dissatisfied with the aforesaid judgment dated 10.2.2000, the complainant-appellant has directed the present appeal.
7. I have heard learned counsel for the parties and have gone through the records of the case with their able assistance.
8. Learned counsel for the appellant has submitted that the sole ground for acquittal was to the effect that cheque in question has been issued for security. It is submitted that case of the accused/respondent himself is that he had borrowed a sum of Rs. 1,30,000/- from the complainant and to part with re-payment of the said amount, cheques in question were issued. The finding of the trial Court is based upon conjectures and surmises. Even suggestion has been put to the complainant that there was a compromise and in compromise Rs. 65,000/- was paid to the complainant and Rs. 30,000/- was adjusted in respect of the motor cycle. It has been further stated that a sum of Rs. 38,000/- is still due. That compromise according to the accused was effected much after the filing of the present petition. The motor cycle was not transferred in the name of wife of the complainant in lieu of the amount owed by the accused payable to his wife. The documentary evidence has been placed on the file. The trial Court has committed grave error in dismissing the complaint of the appellant.
9. In reply to above noted submissions, counsel for the respondent has supported the judgment of the trial Court. It is submitted that cheques were security cheque and as such complaint has rightly been dismissed and only Rs. 38,000/- were due payable to the complainant. The accused offered the said amount but he has not received the same. Rs. 65,000/- has been received by the complainant after the filing of the complaint in view of the compromise, Rs. 30,000/- was adjusted towards the transfer of motor cycle. There was no due against the wife of the complainant. So, prayer has been made for dismissal of the appeal.

10. I have considered the submissions made by both the sides and have gone through the records of the case.

11. The first and foremost question required to be determined is whether the cheque in questions were issued as security or were issued as instalments for the repayment of the debts. The accused has admitted the fact that Rs. 1,30,000/- was advanced to him as a loan and he has issued cheques in question. The said cheques in question cannot be said to be issued as security to the complainant-appellant for repayment of the due amount but were issued for repayment of the amount of the loan. So, the learned trial Court has wrongly observed that complaint is liable to be dismissed on account of the fact that cheques were issued as a security. There was legal liability against the accused/respondent for repayment of the loan amount and cheques were issued in discharge of that liability. So, these cheques cannot be branded as security cheques.

12. The stand taken by the accused is that Rs. 30,000/- were adjusted towards the price of motor cycle which was transferred in the name of wife of the complainant. The accused/respondent has admitted that he has transaction with the wife of the petitioner also. Had the petitioner transferred the motor cycle in the name of wife on account of discharge of liability in that case he must have get the things in black and white, moreso, when the present complaint was already pending. Moreover, it cannot be said that price of old motor cycle would be Rs. 30,000/- at that time. However, the fact remains that receipt of Rs. 65,000/- during the course of trial has been admitted by the complainant.

13. So, considering all the circumstances, made above, the appeal stands accepted. The judgment of the trial Court stands set aside and the accused stands convicted u/s 138 of the Act. However, since the complainant has received Rs. 65,000/- in discharge of the loan amount as admitted by him during the cross-examination, so, the ends of justice would be met in case, if fine of Rs. 68,000/- along with interest @ 6% p.a. from the date of notice that is 26.8.1996 is imposed upon the accused/respondent. The said amount shall be paid within two months from today failing which the accused/respondent shall undergo rigorous imprisonment for a period of nine months. On realization of the fine amount, the trial Court shall disburse the same to the complainant-appellant, as per rules. A copy of this judgment be sent to the trial Court for strict compliance.