

Court No. - 82

Case :- APPLICATION U/S 378 No. - 196 of 2024

Applicant :- Subham Gupta

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Kameshwar Singh, Sudhanshu Kumar Singh

Counsel for Opposite Party :- Digvijay Singh, G.A., Rajesh Kumar Nishad

Hon'ble Nalin Kumar Srivastava, J.

Order on Criminal Misc. Leave to Appeal Application

1. This application has been filed on behalf of the applicant with the prayer to grant leave to file the appeal against the judgement and order dated 28.6.2024 passed by the Special Judicial Magistrate-I, Banda in Criminal Case No. 164/ix/2020 under Section 138 Negotiable Instrument Act, (in short 'the Act') Police Station Kotwali Nagar, District Banda.

2. Heard learned counsel for the applicant, learned counsel for the opposite party no.2 and the learned AGA and perused the material available on record.

3. It is submitted by the learned counsel for the applicant that the impugned judgement and order is totally illegal and erroneous and the learned trial court failed to appreciate the evidence on record and the mandatory provisions of the Act, relevant in the instant matter, have also been completely ignored by the trial court. It is further submitted that it was a misconception on the part of the trial court to hold that the cheque was issued by the opposite party no.2 / accused not in discharge of any debt or other liability whereas the evidence on record consistently shows that in lieu of

some debt the impugned cheque was issued by the opposite party no.2/ accused in favour of the applicant / complainant. It is further submitted that the trial court also mentioned in the impugned judgment that the source of income of the complainant is not proved but he discarded the evidence on record to satisfy the query of the Court. The complainant had complied with all necessary formalities which are required to bring home the guilt of the accused under Section 138 of the Act but the trial court also ignored this aspect of the matter. The issuance of cheque in favour of the applicant / complainant and its disnonour by the bank were admitted facts between the parties but the same have also been ignored by the trial court. In view of the aforesaid submissions, it is prayed that the application for leave to appeal deserves to be allowed.

4. On the other hand, learned counsel for the opposite party no.2 and the learned AGA opposed the prayer and submitted that there is no illegality or perversity in the impugned judgment and order passed by the learned trial court. It is further submitted that a blank cheque was issued in favour of the complainant by the opposite part no.2 / accused in the form of guarantee wherein the name of drawee, amount and date were not filled up. It is also submitted that the transaction took place between the parties in respect of sale of some land but subsequently the transaction failed and opposite party no.2 paid Rs. 1,25,000/- in cash to the complainant / applicant but when he asked to return his cheque, it was refused by the complainant and subsequently it was misused. It is also submitted that the findings recorded by the trial court are based upon the proper assessment of the evidence on record. There is no infirmity or illegality in the impugned judgment and order warranting interference by this Court.

5. I have considered the submissions advanced by the learned counsel for the parties.

6. At the outset, the Court takes notice of this fact that issuance of cheque no. 199713 is admitted to the opposite party no.2 / accused Nainendra Prakash but however he explains the issuance of cheque in a considerable manner. In his evidence as DW-1 he states that the complainant gave a cheque amounting to Rs. 1,25,000/- in the name of Rita Verma, which was encashed in his account. In fact it was given by Rita Verma to him as an advance amount through Shubham Gupta. The said money was returned back to Rita Verma by him. The cheque issued by him was handed over to Shubham Gupta as guarantor. Since the proposed sale failed, his sale amount Rs. 1,25,000/- was returned to him by the proposed seller, which he further handed over to Shubham Gupta, the complainant but subsequently when he demanded for his cheque, he was told that the cheque was lost.

7. DW-2 Dilip Singh Patel also affirms the aforesaid fact and states that for the sake of purchase of some land the accused received cheque no. 101474 from the complainant and further he handed over one blank cheque no. 199713 bearing his signature but he did not fill-up the amount, name or date in the said cheque and further the cheque was not returned back by the complainant to the accused.

8. DW-3 Deepak Kumar and DW-4 Shashi Kumar also depose in the same tone.

9. The complainant was himself examined as PW-1 and PW-2 Saurabh has also been produced . Both the witnesses state that opposite party No.2 Nainendra Prakash borrowed Rupees Three

Lakhs from the complainant and the cheque which was issued by the opposite party no.2 in lieu of payment of the said loan was dishonoured. However, PW-2, who has been an employee of the complainant, in his cross-examination fairly admits his ignorance as to for which reason cheque was given by the opposite party no.2/ accused to the complainant.

10. The learned trial court while appreciating the evidence on record found that the opposite party no.2 / accused Nainendra Prakash and complainant Shubham Gupta are engaged in real estate business. The complainant stood as commission agent for Rita Verma whereas accused stood as commission agent for Ram Bahori. It was the land of Rita Verma for the purchase of which the accused / opposite party no.2 negotiated with the complainant and then Rita Verma issued a cheque amounting to Rs. 1,25,000/- to the accused which was paid to him from the bank. The opposite party no.2 / accused has categorically denied that he had borrowed some money from the complainant. It is a specific defence of accused / opposite party no.2 that Rita Verma had already got her money through his commission agent Shhubham Gupta, the complainant and further his defence is that the impugned cheque given by him to the complainant was as a security as if the money of Rita Verma remains unpaid, she may use the said cheque for the recovery of her money. The learned counsel for the opposite party no.2 has vehemently submitted that since Rita Verma has got her money from the accused / opposite party no.2 and he was legally answerable to Rita Verma, the complainant has no such right to make any demand of money from him. It is the complainant who misused the cheque which was given for Rita Verma.

11. It is pertinent to mention here that the said Rita Verma and

Ram Bahori have not been produced as witness by the complainant. Although the fact of death of Ram Bahori finds place on record but Rita Verma is still alive. PW-1, the complainant, in his cross-examination admits that he had obtained the cheque amounting to Rs. 1,25,000/- related to the bank account of Rita Verma. PW-1 further admits as narrated at page 5 of the impugned judgment, which is like this :

"साक्षी पी. डब्लू 01 ने अपनी जिरह में इस बात का स्वयं कथन किया है कि मैं रीता वर्मा के खाते की चेक संख्या मु . 1,25,000/- रु. का दिलवाया था I रीता वर्मा वगैरह कोई ज़मीन नैनेन्द्र प्रकाश के माध्यम से खरीदने के लिए दिया गया था जिसका सौदा नहीं हुआ I"

12. The learned trial court has relied upon the following judgements while deciding the matter :

- (i) Krishna Janardhan Bhat vs. Dattatraya G. Hegde, AIR 2008 ACC 1325.
- (ii) Padmovrat Poddar vs. State of West Bengal, 2012 (1) Crimes 364 Calcutta.
- (iii) Nagisetty Nagaiah vs. State of Andhra Pradesh and others, 2004 (2) ALD (CRI) 455.
- (iv) Sanjay Kumar Singh vs. Chief Executive Officer, 2010 MP ALJ 457.

13. The learned trial court also examined the factual aspect of the matter. It is mentioned in the impugned judgment that the complainant missed to mention some important facts in the complaint viz. before whom the impugned amount was given by the complainant to the opposite party no.2, no name of any such witness has been disclosed, source of income of the complainant to

show his capability to lend money to the opposite party no.2, the omission to file statement of bank account, the annual income of the complainant and the fact whether he was income tax payee or not. Since a lot of omissions, as above mentioned, in the case of the complainant and the evidence as well were noticed by the learned trial court, it rightly concluded that no legally enforceable debt was running against the opposite party no.2 which was to be paid to the complainant and further the cheque was given by the opposite party no.2 to be handed over to Rita Verma but it was taken by the complainant as security money and on the aforesaid grounds the trial court rightly held that the legal parameters to establish the conviction under Section 138 of the Act are missing completely in the instant case.

14. It is a trite law as laid down by the Hon'ble Apex Court in a catena of decisions with regard to the power of appellate court that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible from the evidence adduced in a case, one pointing to the guilt of accused and the other to his innocence, the view which is favourable to the accused should be adopted. There are no jurisdictional limitations on the power of Appellate Court but it is to be exercised with some circumspection. The paramount consideration of the Court should be to avoid miscarriage of justice. A miscarriage of justice which may arise from the acquittal of a guilty is not lesser than that from the conviction of an innocent. If there is miscarriage of justice from the acquittal, the higher Court would examine the matter as a Court of fact and appeal while correcting the errors of law and appreciation of evidence as well.

15. In this matter, on close scrutiny of entire facts and evidence, I

am of the view that the complainant miserably failed to establish the guilt of accused / opposite party no.2 for the offence under Section 138 N.I. Act beyond reasonable doubt. Findings recorded by trial court in the impugned judgment and order are based on correct appreciation of facts, evidence and law. The judgment and order of the trial court under judicious scrutiny is just and proper, which does not warrant any interference by this Court. The impugned judgement does not suffer from any illegality, infirmity or perversity. The reasoning adopted by the learned Trial Court is based upon proper application of judicial mind.

16. Thus, the application moved by the appellant to grant leave to appeal for the reasons discussed here-in-above is not liable to be allowed and the said prayer is refused.

Re : Criminal Appeal

17. Since the application for grant of leave to appeal has been disallowed, the criminal appeal is dismissed at this stage.

Order Date :- 27.11.2024

safi