IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.41011 of 2012 in/and
Criminal Misc. No.A-547-MA of 2012

Date of decision: 09th January, 2015

Shiv Ram

...Petitioner

Versus

Mohan Cooperative

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Bijender Dhankhar, Advocate,
for the applicant.

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INDERJIT SINGH, J.

Criminal Misc.No.41011 of 2012

Heard. For the reasons, mentioned in the application, the same is allowed. Delay of 6 days in filing the application for leave to appeal is allowed.

Criminal Misc. No.A-547-MA of 2012

Brief facts of the case are that complainant-petitioner Shiv Ram (hereinreferred as 'the complainant') filed a complaint with the allegations that accused-respondent (hereinreferred as 'the accused') borrowed a friendly loan of Rs.2,50,000/- on 20.02.2006 from the complainant for his business purpose. After taking the said loan, the accused promised to repay it within a period of three months. After the expiry of three months, the complainant asked the accused to return back the abovesaid loan amount but the accused avoided it on one pretext or the other and after admitting his liability, he issued a cheque bearing No.934152 dated 25.05.2006 for an amount of Rs.2,50,000/- drawn at Oriental Bank of Commerce, Mohan Cooperative and Estate Mathura Road Branch, New Delhi in favour of complainant against account No.11372011002035. At the time of issuance of said cheque, the accused assured the complainant that the said cheque, on presentation, would definitely be got encashed. Accordingly, the complainant presented the said cheque through his banker "Punjab National Bank" for encashment but the it was returned back as unpaid with remarks 'insufficient funds'. Then legal notice was served upon the accused but no money was paid. Therefore, the present complaint was filed.

Learned trial Court, vide judgment dated 30.04.2012, dismissed the said complaint and acquitted the accused.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that first of all it is stated that the accused had taken loan of Rs.2,50,000/- from the complainant but there is no document on record to show as to from where such a huge amount has been withdrawn by the complainant. It looks doubtful that such a huge amount is given to the accused without getting executed any written document. It is in the evidence that this amount was given without interest. It also looks doubtful that such a big amount will be given to the accused for business purpose without any interest. Again, the complainant has stated in his cross-examination that he used to file the income tax return when he was teacher and now after retirement he did not file any income tax return. Complainant has further stated that he has not shown the said loan amount in the income tax return. As per complainant, loan for an amount of Rs.2,50,000/- has been given to respondent-accused in cash rather as per the provisions of income Tax Act, it should be given through cheque etc. Complainant has also stated in his cross-examination that he did not know whether Arun Kumar is proprietor of Mohan Co-operative-respondent or not. In the present complaint, respondent is Mohan Co-operative through its proprietor Arun Kumar which means that the complainant even is not knowing whether Arun Kumar is owner of respondent-firm or not. The cheque has been issued from the account of respondent-firm, therefore, it becomes more necessary to show that the loan has been given to respondent-firm. Furthermore, the complainant in cross-examination has stated that the cheque Ex.C1 has been received by him from accused on the same day when the complainant gave him the money which is also contradictory to the averments stated in the complaint where it was stated that the cheque was issued after 3 months of the payment of loan amount. Furthermore, the complainant has stated in his statement that there was no giving or taking of his with respondent-firm. If there is no business transaction with respondent-firm then how it can be held that respondent-firm has given the cheque in discharge of the liability.

Keeping in view the facts and circumstances of the present case, I find that the findings returned by the learned trial Court vide judgment dated 30.04.2012, are correct and as per law and do not require any interference by this Court. Furthermore, there is no ground for grant of leave to appeal. The respondent has been rightly acquitted by the learned trial Court.

Accordingly, finding no merit in the present application, the same is dismissed.

09th January, 2015 **(INDERJIT SINGH)**
mamta **JUDGE**