IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. A-313-MA of 2013 (O&M)
Date of decision : 04.02.2015

Bhag Singh

...**Applicant/Appellant**

versus

Kamaljeet Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: None for the applicant-appellant.

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RITU BAHRI , J.

Crl. Misc. No. 29971 of 2013

For the reasons mentioned in the application, delay of 35 days in filing the present appeal is condoned.

Misc. application stands allowed accordingly.

Crl. Misc. No. A-313-MA of 2013

Challenge is to the judgment dated 04.12.2012 passed by the Judicial Magistrate, Ist Class, Chandigarh, whereby accused-respondent has been acquitted of the offence under Section 138 of the Negotiable Instruments Act.

Bhag Singh-complainant filed a complaint with the allegations that accused-respondent, Kamaljeet Singh, had entered into an agreement to sell his house i.e. House No.2132, Pipliwala Town, Manimajra, Chandigarh with the complainant and received a sum of Rs.5,03,500/- as part payment of sale consideration. But, he failed to get the sale deed registered in favour of complainant-Bhag Singh, however, agreed to return the amount, so received by him. Accordingly, accused-respondent issued three cheques in favour of the complainant, out of which, two cheques, on presentation, were dishonoured due to 'insufficient funds' in the account of the accused-respondent. Thereafter, the complainant served a legal notice, calling upon the respondent to make payment of the cheque amount. But, the accused-respondents failed to make the payment. Hence, the complaint.

After conclusion of the trial, vide impugned judgment dated 04.12.2012, the trial Court has acquitted the accused-respondent.

As per the version of Bhag Singh-complainant (CW-1), agreement to sell (Ex.D3) was executed between the parties and accused-respondent had received a sum of Rs.5,03,500/- from the complainant. Reference was made to reverse side of first page of Mark-A, where the complainant had acknowledged the payments of Rs.2,00,000/- and Rs.2,25,000/-. But, the accused-respondent had failed to execute the sale deed. However, he agreed to return the amount already by him. Accordingly, he issued two cheques, Ex.C1 and Ex.C2 along with another cheque of Rs.40,000/- in favour of the complainant. The case of the complainant was that he had arranged the money by getting encashed the FDR of his daughter and this entry had been duly reflected in the bank passbook.

On the other hand, the case set up by accused-respondent was that the complainant has filed a false complaint on the basis of stolen cheques. As per the contents of agreement to sell (Ex.D3), there was no averment that any consideration had been passed over to the accused-respondent pursuant to the same. It was alleged that the complainant was doing the business of property dealing. After having executed the agreement to sell in his favour, the complainant got the sale deed (Ex.D2) executed in favour of one Harmesh Kumar. As per the defence version, the cheques in question were stolen by the complainant from the house of accused-respondent and thereafter, he forged the same and presented for encashment in the bank without any liability. As per Clause (2) of the agreement, accused-respondent had received a sum of Rs.2,00,000/- as earnest money.

During the proceedings before the trial Court, the complainant had placed on record copy of passbook (Ex.DA/2), wherein, an entry has been made regarding withdrawal of Rs.1,70,000/- on 11.04.2008. However, the agreement to sell was executed on 17.03.2008 and the alleged receipt on the reverse side of the agreement was dated 26.03.2008. The complainant was not able to lead any evidence to prove, as to how the amount of Rs.1,70,000/- which was withdrawn on 11.04.2008, was paid in March, 2008 with respect to the agreement (Ex.D3).

The trial Court has further observed that as per the reverse side of Mark-A, there was acknowledgment of two payments of Rs.2,00,000/- and Rs.2,25,000/-. Accordingly, the total payment made to the accused-respondent comes to about Rs.6,25,000/-. The complainant would have never agreed to cancel the agreement to sell after more than one year for Rs.5,03,000/- only. In these circumstances, the complainant-petitioner was not able to lead any evidence to prove that there was some liability, which the accused-respondent was required to discharge. Therefore, while acquitting the accused-respondent, the trial Court rightly came to a conclusion that the defence of the accused-respondent was probable and presumption raised in favour of the complainant regarding passing of consideration had been rebutted.

Having examined the impugned judgment, this Court is of the view that there is no evidence on the record, which has been misread by the trial Court, which can lead to conviction of the accused-respondents.

Dismissed.

04.02.2015 **(RITU BAHRI)**
ajp **JUDGE**