IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-499-MA of 2013 (O&M)
Date of decision: January 09, 2015

The U.E. Coop. Urban (SE) T&C Society Ltd. Rohtak through its Hony. Secretary Sh.Parveen Rathi

...Applicant

Versus

Chaman Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep K.Sharma, Advocate for the applicant.

Mr.Akashdeep Singh, Advocate for the respondent.

****

INDERJIT SINGH, J.

Applicant has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against Chaman Singh respondent challenging the judgment dated 07.09.2010 passed by learned Judicial Magistrate Ist Class, Rohtak, whereby the criminal complaint filed by the applicant under Section 138 of the Negotiable Instruments Act has been dismissed.

It is mainly stated in the grounds of appeal that vide impugned judgment dated 07.09.2010 passed by learned JMIC, Rohtak dismissing the complaint under Section 138 of the Negotiable Instruments Act, is illegal, erroneous, misconceived and unwarranted by the law and facts of the case and hence, the same is liable to be set aside. It is stated in the application that vide resolution No.3 dated 03.04.2011, the society authorized Chander Singh Rathi to institute complaints/cases on behalf of the complainant Society. It is further stated that learned trial Court has erred in law and facts on record in dismissing the complaint filed by the applicant and acquitting the respondent of the charge under Section 138 of the Negotiable Instruments Act. The impugned judgment is result of non-appreciation and wrong appreciation of law and facts of the case. It is also stated that trial court has assigned a totally strange as well as wrong reasoning for discarding the witnesses as well as the documents available on record. Under Section 139 of the Act, there is a presumption in favour of the holder of the cheque that the same was issued by the accused in discharge of his legal enforceable liability.

Notice of motion was issued and learned counsel for respondent appeared and contested the application.

I have heard learned counsel for the applicant as well as learned counsel for the respondent and have gone through the record.

As per the facts of the case, a complaint was filed on the allegations that accused after becoming member of the Society, had availed a loan from the complainant, as such the latter was duty bound to pay back the loan amount with interest in monthly installments but there had been irregularity of the same. In view to clear the liability in part, the accused had issued a cheque No.687181 dated 16.04.2009 for ₹65,000/- in favour of the complainant from his account number with the assurance that there was sufficient amount in his account and his cheque on presentation would be honoured. On presentation of said cheque, it was dishonoured and returned unpaid with the remarks 'Funds insufficient'. Legal notice was issued. Thereafter, present complaint was filed.

The complainant, during trial, got examined CW-1 Parveen Rathee, Secretary. Statement of accused under Section 313 Cr.P.C. was recorded. The accused stated that complainant had called him at his residence and got his signatures but had not given any amount to him. He also stated that complainant had procured his signatures on his blank cheques and later on filled the amount on them.

The trial Court after discussing the evidence on record as well as law, held that Section 138 of the Negotiable Instruments Act has three ingredients, (i) that there is a legally enforceable debt; (ii) that the cheque was drawn from the account of bank of discharge in whole or in part or any debt or other liability which pre-supposes a legally enforceable debt; and (iii) that the cheque so issued had been returned due to insufficiency of funds. The Court after discussing the evidence of the complainant held that entire complaint is completely silent as to: (a) when the accused became the member of the complainant society?; (b) when the loan was advanced to the accused and to what amount?; (c) what were the terms and conditions of the disbursement of the loan amount and the mode of payment?; (d) if the mode was installments, whether any installments were paid by the accused to the complainant? (e) what, when and how was the irregularity in the payment of the installment?; and (f) on what basis the alleged legal enforceable liability of the accused came to be that of cheque amount?

The Court after appreciating the evidence of the complainant held that during cross-examination he totally showed his ignorance to the effect as to when the loan amount was taken though he deposed that loan amount was to be paid with interest in 48 installments. Though he deposed that the said facts were duly available in the record but no record had been produced by the complainant which could answer the questions posed of which the complaint is completely silent. It is further held that rather the record had been withheld by the complainant with reason best known to him. The accused had clearly come up with the defence that the complainant had got his signatures on the blank cheques and other papers but no loan amount was disbursed to him. Therefore, it was mandatory for the complainant to produce the record to show the liability and the fact that loan was given of this amount, on this date and how many installments the accused had paid and what amount remains due payable regarding which the cheque was issued. In the absence of this evidence, the accused has rebutted the presumption that cheque is not issued for legally enforceable debt.

Therefore, from the above, I find that the judgment dated 07.09.2010 passed by learned Judicial Magistrate Ist Class, Rohtak is correct and as per law and does not require any interference from this Court. Accordingly, I find that no ground is made out to grant permission for special leave to appeal and therefore, the present application stands dismissed.

January 09, 2015 **(INDERJIT SINGH)**
Vgulati **JUDGE**