

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

Crl. Misc.A.No.12-MA of 2015
Date of Decision : 3.3.2015

Shiv Dial Singh

.....Petitioner

Vs.

Jitender Kumar and another

.....Respondents

...

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

...

Present : Mr. G.C. Shahpuri, Advocate for the petitioner.

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1. To be referred to the Reporter or not ?
2. Whether the judgement should be reported in Digest ?

RAMESHWAR SINGH MALIK, J

Applicant, by way of instant application under Section 378 (4) of the Code of Criminal Procedure (for short 'Cr.P.C.'), seeks leave of this court for filing appeal against the judgement of acquittal dated 10.10.2014, passed by the learned Judicial Magistrate, Ist Class, Bilaspur, whereby complaint of the present applicant under Sections 138/142 of Negotiable Instruments Act was dismissed, by passing the impugned judgement of acquittal.

Learned counsel for the applicant submits that the applicant paid an amount of Rs.2,50,000/- to the accused-respondent as a friendly loan. He further submits that the applicant was having sufficient agricultural land and he duly proved his source for the amount in question. After some time, accused-respondent issued the cheque in question in favour of the applicant. When the

cheque was dishonoured for insufficient funds, applicant was left with no other option, except to file the complaint under Sections 138/142 of the Negotiable Instruments Act against the present respondent-accused. Learned counsel for the applicant would further contend that the learned trial court misdirected itself, while not appreciating the voluminous evidence available on record in correct perspective and the impugned judgement has resulted in miscarriage of justice . In support of his contention, learned counsel for the applicant places reliance on a judgment of this court in **Rakesh Kumar Vs. Ravinder Kumar and another**, 2012 (3) RCR (Criminal) 301, to contend that the onus was on the accused to prove that he never received the amount from the applicant and he did not issue the cheque in question towards his existing financial liability. He prays for allowing the instant application for leave to file appeal against the impugned judgement of acquittal.

Having heard the learned counsel for the applicant-complainant at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that in the given fact situation of the case noted herein above, present one has not been found to be a fit case warranting interference at the hands of this court, against the impugned judgement of acquittal. To say so, reasons are more than one, which are being recorded hereinafter.

Firstly, the applicant-complainant was duty bound to show that he had collected the cheque amount from his known source of income i.e. Agriculture. Admittedly, he did not bring any evidence, whatsoever, on record of the case so as to show, even prima facie, that he has drawn the said income of Rs.2,50,000/- from his agricultural land. During the course of hearing, when a pointed question was put to learned counsel for the applicant-complainant in this

regard, he had no answer and rightly so, because it was a matter of record. Applicant did not produce any evidence in this regard for the reasons best known to him. In fact, he was proceeding on a presumption that the entire onus would lie on the accused-respondent. Having said that, this court feels no hesitation to conclude that the learned trial court committed no error of law, while passing the impugned judgement of acquittal and the same deserves to be upheld.

When the respondent appeared before the court for getting his statement recorded under Section 313 Cr.P.C., he categorically deposed that he was not acquainted with the applicant-complainant nor he issued any cheque to the complainant in discharge of his existing financial liability. He finally referred to another transaction between his father and one Sanjay Kumar son of Prem. He also referred to a document Ex.R-11, which was a certified copy of plaint of Civil Suit No.1064 decided on 25.8.2014 titled as Hukam Chand etc. Vs. Sanjay Kumar,.

Accused also placed on record numerous documents, including Ex.R-3 to R-10, so as to prove the stand taken by him before the court. Present applicant-complainant also filed a similar complaint under Section 138 of the Negotiable Instruments Act against the father of the respondent-accused. Thus, it is crystal clear that so far as the applicant-complainant is concerned, he has miserably failed to prove his case by leading cogent and sufficient evidence. On the other hand, respondent-accused has produced on record well convincing evidence, which was rightly appreciated by the learned trial court, while passing the impugned judgement of acquittal and the same deserves to be upheld, for this reason also.

The relevant observations made by the learned trial court in paras 14 and 15 of the impugned judgement, read as under :-

“ From the perusal of the aforesaid cross examination of the complainant one thing that has emerged out before this court that at the time of advancement of loan of Rs.2,50,000/- between the complainant and the accused, no document was reduced into writing which is quite strange because it is not believable that a person who is advancing such a huge sum i.e. Rs.2,50,000/-, no document was reduced into writing . Furthermore, the complainant in his cross examination clearly admitted that no interest was chargeable by him on the said huge sum of Rs.2,50,000/- which were borrowed by the accused from him and this version of the complainant is quite strange because the accused was not a close relative of the complainant and it has also come in the evidence of the complainant that accused was frequent visitor to the house of complainant but even then no prudent man would give such a huge amount on credit to another person with whom he is only acquainted without any interest. The complainant in his cross examination categorically stated that accused used to meet him which means that complainant only acquainted with the accused which clearly shows that there was no business transaction between the complainant and the accused and while advancing such a huge sum to the accused, the complainant has not settled any interest on the said borrowed huge amount of Rs.2,50,000/- with the accused which is quite strange. Further, complainant has stated in his cross-examination that the said amount of Rs. 2,50,000/- was given by him to the accused in

presence of his brother and son but even then, complainant has not examined the aforesaid persons in whose presence the said huge sum was given to the accused on credit which is also major lacuna in the present case because the right of the accused to cross-examination the aforesaid independent witnesses on material points is highly prejudiced. Further, complainant has alleged that some amount was lying with him in lieu of sale of sugarcane crop and some amount was lying with him in lieu of sale of wood, if this is the case of the complainant, then, complainant should have produced on file receipts of the same to prove the genuineness of his case but no such receipt is on the file and therefore, an adverse inference is drawn against the complainant. Furthermore, there is no evidence on the file to prove that what were the source available with him regarding keeping in his house such a huge sum of Rs.2,50,000/-. Further, in his cross-examination complainant has stated that he is an agriculturist having 18 acres of land, however, the jamabandies for the years 2008-09 and 2010-2011 which are Ex.C8 and Ex.C9 on the file are not with regard to ownership of land measuring 18 acres which is owned by the complainant. Furthermore, in his cross-examination in the case titled as "Shiv Dayal Singh Versus Hukam Chand" copy of which is annexed as R10 on the file, in which, present complainant submitted that he is owner of 9.1/2 acres of land. In the present complaint, complainant is stating that he is owner of 18 acres of land whereas in the other

complainant he is deposing that he is owner of 9.1/2 acres of land thus, which of version of the complainant is true is not clear before this court and for this categorical stand, an adverse inference is drawn against the complainant. Furthermore, the capacity of the compainant to advance such a huge amount to the accused as well as his father Hukam Chand is also not proved on the file as the complainant has not placed on record any proof regarding source of keeping the aforesaid huge sum at his house because whole sum as per the averments of the complainant in the complaint was given to the accused in cash not by cheque. Furthermore, in the present case, accused was examined by this court under Section 313 Cr.P.C., and in his statement under section 313 Cr.P.C., before the court, accused has categorically deposed before this court that he is not acquainted with the complainant and that he has never issued any cheque to the complainant in discharge of his existing liability. Accused further deposed before this court in his statement under section 313 Cr.P.C., that his father had borrowed a sum of Rs.1,24,000/- from one Sanjay Kumar son of Prem resident of Chhachhrauli and out of that sum of Rs.1,24,000/-, one lakh were of his father and that a sum of Rs.24,000/- were taken from him and regarding that amount, his father had given 20 blank cheques and 12 cheques which were duly signed by him to aforesaid Sanjay and from bare perusal of Ex.R2 which is copy of judgement passed by this court the stand taken by the accused in his statement under

section 313 Cr.P.C., duly proved. Further, the accused has also taken a plea that he as well as his father has also filed a civil suit against Sanjay for return of the blank cheques and other documents and in order to prove the same, the accused has also placed reliance on document i.e. Ex.R11 which is certified copy of plaint of the civil suit no.1064 decided on 25.8.2014 titled as “Hukam Chand etc. Versus Sanjay Kumar” which is suit for permanent injunction. Furthermore, in order to prove his stand, the accused had also filed a complaint before the police authorities and regarding that complaint matter was thoroughly investigated by the police as is evident from the bare perusal of documents Ex.R3; Ex.R4; Ex.R5; Ex.R6; Ex.R7 and Ex.R8 which are annexed with the judicial file and these documents are material documents in the present case to prove the case of the accused. Moreover, all these assertions of the accused further clear from the fact that present complainant had also filed a similar complaint under section 138 of Negotiable Instrument Act, against father of the accused namely Hukam Chand titled as “Shiv Dial Singh Versus Hukam Chand”, as is evident from the bare perusal of certified copy of Ex.R10, in which present complainant appeared in the witness box as CW1 and in his cross-examination of that complaint as well, the present complainant has categorically stated that he had given the amount of Rs.7,00,000/- on credit to both father i.e. Hukam Chand and son i.e. Present accused Jatinder Kumar and that amount was not given through cheque

rather it was given in cash. In the present case as well, the complainant is giving a sum of Rs.2,50,000/- to the present accused that too in cash but complainant could not prove the source from where the aforesaid amount was arranged. In the case law titled as Krishna Janardhan Bhat Versus Dattatraya G. Hegde 2008 (2) LJR 559 (S.C.) wherein it has been held by the Hon'ble Apex Court "that complainant alleged that he advanced Rs.1,50,000/- to the accused-Accused convicted conviction set aside. Complainant could not prove that he had so much money to advance payment of money to accused not proved by any documentary evidence. Defence that a blank cheque came into hands of complainant during business transaction and the complainant filled up the amount and misused if believed-any amount of more than Rs.20,000/- or more by way of loan has to be made by way of an account payee cheque." Reliance in this regard can also be placed on the case law titled as John K. Abraham Versus Simon C. Abraham and another 2014 (1) Apex Court Judgements 020 (S.C.) in which, it has been held by Hon'ble Apex Court that "(i) Negotiable Instrument Act, 1881, section 138, 139, 118-Dishonour of cheque-presumption-cheque issued towards repayment of loan – In order to draw presumption, heavy burden lies on complainant to show that he had required funds for having advanced the money and that the issuance of cheque in support of said payment advanced was true and that accused was bound to make the payment as had been agreed while

issuing the cheque in favour of complainant.

(ii) Negotiable Instrument Act, 1881, S. 138 – Dishonour of cheque-complainant not sure about the date of advancing loan – complainant not sure as to who wrote the cheque-complainant not even aware when exactly and where exactly the transaction took place – These are serious locunas which strike at the root of the complaint-accused acquitted.” Reliance in this regard can also be placed on the case law titled as Krishna Janardhan Bhat Vresus Dattatraya G. Hegde 2008 (2) Latest Judicial Reports page 559 (S.C.)

15. Admittedly in the present case, it has come in the evidence of the complainant that no interest is chargeable on the huge loan so advanced. It is also admitted fact that with regard to the giving of blank cheques by the accused as well as his father, a civil suit has also been filed for return of these cheques. It is also proved on the file that while advancing such a huge sum to the accused, no instrument has been executed in between the complainant and accused. Furthermore, no person i.e. his brother and son, in whose presence said loan amount was given to the accused has been examined by the complainant in the present case. All these facts go to show that the complainant has not approached this court with clean hands and his conduct is not that of a prudent man. Reliance in this regard can also be placed on the case law titled as John K.John Versus Tom Varghese and another 2007 (4) Civil Court cases page 690 (S.C.). In the present case as well, the execution of

cheque is not proved particularly when the complainant himself admitted in his cross-examination that the cheque was not filled up by the accused in his presence and mere marking of exhibit on the document does not dispense with formal proof of documents and without proof thereof, the document cannot be admissible in evidence. Reliance in this regard can be placed on the case law titled as Karnail Singh Versus M/s Kalra Brothers, Sirsa 2009 (2) RCR (Civil) page 381 Punjab and Haryana High Court. In the present case as well, it was the duty of the complainant to prove that there was a legal enforceable debt against the accused against which he had issued the cheque in question but in the present case, the complainant has miserably failed to prove the existing liability that the complainant has made any advance amount to the accused against which the cheque in question was issued and no presumption under Section 139 of Negotiable Instrument Act, can be attached against the accused.”

A bare perusal of the abovesaid relevant part of the impugned judgement of acquittal would show that the learned trial court proceeded on a factually correct and legally justified approach, while considering each and every relevant aspect of the matter before arriving at a judicious conclusion. So far as the judgement relied upon by learned counsel for the applicant is concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgement, the same has not been found of any help to the applicant-complainant, being distinguishable on facts. Further, it is the settled proposition

of law that peculiar facts of each case are to be examined, considered and appreciated first before applying any codified or judge made law thereto. Some times, difference of one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in *Padmausund Rao and another Vs. State of Tamil Nadu and others*, 2002 (3) SCC 533.

During the course of hearing, learned counsel for the applicant-complainant could not point out any patent illegality or jurisdictional error in the impugned judgement of acquittal, so as to convince this court to take a different view than the one taken by the learned trial court.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that the instant application is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above said observations made, the instant application stands dismissed, however, with no order as to costs.

3.3.2015
GS

(RAMESHWAR SINGH MALIK)
JUDGE