IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1629-MA-2014 (O&M)

Date of Decision: 20.4.2015

Nand Lal

…..Petitioner

versus

Mewa Ram

....Respondent

CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.D.Sharma, Advocate for the petitioner.

HEMANT GUPTA, J. (Oral)

The complainant is in appeal aggrieved against the judgment dated 11.3.2014 whereby the complaint for the offences under Sections 420, 467, 471 IPC was dismissed.

The appellant has filed the complaint alleging therein that the respondent-accused approached him on 15.8.2006 and raised a demand of ₹65,000/- as loan. The said amount was paid to be repayable with interest @ 2% per month. On 27.8.2005 the accused again demanded ₹50,000/- which was also advanced with promise to repay the same along with interest @ 2% per month but the accused did not repay the amount. On 10.11.2007 accused came to the office of the complainant and handed over a cheque No.384897 and asked the complainant to make out the account of payable amount. The appellant told that an amount of ₹1,75,450/- is due amount and therefore, said cheque was issued and delivered to the complainant but the said cheque was dishonoured when presented on 13.11.2007 with the remarks "Cheque irregularly drawn/account does not exist." It is, thereafter, complaint was filed pointing out that though the accused had an account with the bank and the said account was closed before the cheque was signed and delivered to the appellant.

Before the learned trial Court, the parties examined number of witnesses including Sh.Arvind Sood, Finger Print Expert and Ms.Sukhpreet Kaur, Hand Writing Expert.

After considering the evidence led by the parties, the learned trial Court found that the appellant has not produced any loan agreement of advancing loan of ₹65,000/- and ₹50,000/- and that it is highly improbable that loan was given without getting any loan documents executed. Appellant has not taken any action against the accused by filing any recovery suit and has not produced any account book or ledger regarding the entry of the aforesaid amount in the account books of the petitioner nor produced the income tax returns for the relevant period, in support of the loan advanced to the respondent. Learned trial Court also found that there is material contradictions in the evidence led by the appellant. In the pre-charge evidence, the appellant has stated that the accused has put the signatures on the cheque in his presence but there is no such averment in the complaint. Rather the averment is that the accused authorised him to fill the cheque. The trial Court, thus, found that advancement of loan has not been proved by the appellant nor there is any occasion for the accused to hand over the cheque in dispute to the complainant. With such finding, the learned trial Court dismissed the complaint and acquitted the accused.

We have heard learned counsel for the appellant and found no merit in the present appeal.

It could not be pointed out by the learned counsel for the appellant that any evidence has been misread or has not been taken into consideration. There is divergence of evidence led by the appellant in the manner of issuance of cheque. Averment made in the complaint shows that cheque was given to the appellant and appellant has filled up the cheque but in the evidence, the stand of the appellant is that accused filled up the cheque and handed over to him. The trial Court has found that there is no proof of loan having been advanced to the respondent nor the appellant has produced any account books or income tax returns to show that in fact any amount was advanced and reflected in the account books of the appellant. The reasoning given by the trial Court is possible reasoning based on evidence and that such finding cannot be said to be perverse. Therefore, we do not find any merit in the appeal.

Consequently, we do not find any merit in this appeal and the same is hereby dismissed.

(Hemant Gupta)
Judge

20.4.2015 **(Lisa Gill)**
Meenu **Judge**