

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-A No.1854-MA OF 2014 (O&M)
DATE OF DECISION : 3RD AUGUST, 2015

Munish Kumar

.... appellant

Versus

Jawinder Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Narinder Singh Dadwal, Advocate for the applicant-appellant.

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SURINDER GUPTA, J. (Oral)

CRM-36892-2014

There is delay of 1334 days in filing the instant appeal. Learned counsel for the appellant submits that after the judgment of trial Court appellant filed CRM-A-607-M-2011 before this Court well within the limitation, which was got dismissed as withdrawn on 02.05.2012 with liberty to challenge the judgment of acquittal before the Sessions Judge, Ludhiana, as per the amended provisions of Section 372 Cr. P. C. The appellant filed appeal before the Sessions Judge, Ludhiana which was dismissed in view of law laid down by the Apex Court in the case of *Subhash Chand versus State, AIR 2013 SC, 395* holding that the appeal lies before the High court and not before the Court of Sessions. Thereafter, the appellant filed the instant appeal. Due to above reason the delay of 1334 days in filing the appeal has occurred.

In view of the submissions of learned counsel for the appellant and reasons mentioned in the application the delay in filing the appeal is condoned.

The application stands allowed accordingly.

CRM-A No.1854-MA OF 2014 (O&M)

1. The complaint filed by the applicant-appellant for offence punishable under Section 138 Negotiable Instruments Act, 1881 (in short, the Act) was dismissed by the Judicial Magistrate, Ludhiana vide judgment dated 02.04.2011.

2. The case of the complainant-appellant in brief is that the respondent had taken a loan of ₹4,00,000/- from complainant and issued the cheque bearing No.057692 dated 19.09.2007 for a sum of ₹3,85,000/- drawn on State Bank of Patiala, Ghumar Mandi, Ludhiana. The cheque when presented to the bank, was dishonored vide memo dated 29.11.2007 with the remarks 'payment stopped by drawer'. After statutory notice thereafter the complainant filed complaint. After recording preliminary evidence the respondent was ordered to be summoned and on his appearance he was served with notice of accusation for offence under Section 138 of the Act.

3. In support of its case the complainant himself appeared as CW-1 and tendered certain documents. On conclusion of evidence of complainant statement of respondent under Section 313 Cr.P.C. was recorded wherein he denied the allegations levelled against him. The respondent denied that he had taken any loan from the applicant-appellant or had issued any cheque in his favour. The cheque in question was in fact

stolen by complainant and misused by him in connivance with one Jaswant Singh Kalsi.

4. The trial Court dismissed the compliant inter alia on the following grounds:

- (i) The complainant was a tenant under the respondent in a premises at the monthly rent of ₹10,000/-.
- (ii) The complainant-appellant was in arrear of rent from 01.09.2003 to 31.10.2007 and ejectment petition was filed against him which was allowed.
- (iii) Suit for recovery was also filed against the complainant but he never raised the plea of set off in that suit.

5. The Court reached the conclusion that a person who did not even possess the affordability of paying the monthly rent of ₹10,000/- would not show the magnanimity of lending of heavy amount of ₹4,00,000/- to his landlord.

6. The version of the complainant was also rejected on the ground that relationship between him and the respondent were not cordial on account of non-payment of rent from 2003 onward and under these circumstances it is not plausible that the complainant will advance a loan of ₹4,00,000/- to the respondent.

7. The trial Court also took note of the fact that the respondent after loss of the cheque had not only stopped the payment by issuing instructions to the banker in the year 2003, but also lodged prosecution against the complainant through a complaint to the local police and also filed a separate complaint in Court.

8. The respondent had given a detailed reply to the legal notice issued by the complainant explaining his entire defence version.

9. From the above facts as discussed by the trial Court, it is apparent that the complaint filed by the appellant was the outcome of the passing of ejectment order against him by the Rent Controller and the trial Court, after looking into all the facts and circumstances and for the reasons mentioned above, has committed no error of law or fact while dismissing the complaint.

10. Keeping in view the above, no reason is made out to grant any leave to appeal under Section 378(4) Cr.P.C. Accordingly, the petition along with application seeking leave to appeal, is dismissed.

3rd August, 2015
'raj'

(SURINDER GUPTA)
JUDGE