

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

**Criminal Misc. No. A-1868-MA of 2014
Date of Decision:-09.04.2015**

Raj Kumari Jawa

...Appellant

Versus

Parmod Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Ms. Sharmila Sharma, Advocate
for the applicant-appellant.

HARI PAL VERMA J.(Oral)

This is an application under Section 378(3) of the Code of Criminal Procedure seeking permission to grant special leave to appeal against the order dated 7.8.2014 passed by the Judicial Magistrate 1st Class, Karnal, whereby the accused-respondent has been acquitted in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

The complainant has filed a complaint under Section 138 of the Act on the premises that the complainant and respondent-accused were in business terms with each other and accused used to borrow money from the complainant from time to time. As per accounts, the total outstanding liability of the accused was Rs.2,00,000/- and in discharge of this liability the accused had issued a cheque No.084500 dated 23.9.2010

for Rs.1,00,000/- and cheque No.084499 dated 24.8.2010 for Rs.15,000/- drawn at Syndicate Bank, Karnal in favour of complainant. When the said cheques were presented for encashment with her bankers, the same were returned unpaid with the remarks 'Funds Insufficient' vide memos dated 25.9.2010 and 6.10.2010 respectively. Accordingly, a statutory legal notice dated 12.10.2010 was served upon the accused by way of registered post calling upon the accused to make payment of the cheques. The accused failed to make the payment within the stipulated period of 15 days, compelling the complainant to file the complaint.

On the basis of preliminary evidence as led by the complainant, the accused was summoned to face trial for commission of offence punishable under Section 138 of the Act. While putting in appearance, respondent-accused pleaded not guilty and claimed trial. In order to prove her case, the complainant stepped into witness box as CW1 and deposed that she (complainant/petitioner) and respondent-accused were on business terms. The accused has borrowed an amount of Rs.1,15,000/- from her and in order to discharge his liability, two cheques Ex.CW1/B and Ex.CW1/C were issued in favour of the complainant. However, on presentation of cheques, the same were dishonoured on the grounds of 'Funds Insufficient'. In support thereof Sudesh Kumar Sharma, Clerk, Syndicate Bank, Karnal was examined as CW2, who deposed that the Cheques Exhibits CW1/B and CW1/C were dishonoured due to insufficient funds vide memos Ex.CW2/A and Ex.CW2/B respectively. Thereafter, the complainant's counsel closed the evidence vide statement dated 22.7.2014.

In the statement under Section 313 Cr.P.C. the accused-respondent denied the contents of complaint and pleaded false implication by the complainant. He pleaded innocent in the case and closed his statement vide order dated 7.8.2014.

Considered the rival contentions of the parties, learned trial Court dismissed the complaint with the following observations :-

“17. To raise a probable defence, the accused has completely relied upon the evidence led by the complainant i.e. cross-examination of the complainant recorded on 22.7.2014. After minutely perusing the averments of complaint and evidence led by the complainant, the Court is of the view that the defence has been successful in elucidating sufficient material from the evidence of complainant to surround the entire complaint version with clouds of reasonable doubt. The material elucidated from the evidence of complainant by the defence have been reproduced as follows :-

- 1) It has been mentioned in the complaint that the accused was on business terms with the complainant and used to borrow money from time to time whereas during cross-examination she deposed that she was not running any business and had no knowledge regarding the business of accused.
- 2) It has been mentioned in the complaint that as per the accounts, the accused was liable to pay Rs.2,00,000/- to the complainant till

date whereas during cross-examination she could not even tell a single instance when the accused borrowed money from her. She also admitted that there were no accounts books or similar documents maintained by her which could show that the accused borrowed money from her.

- 3) It has been specifically mentioned that the cheques were issued in discharge of part debt/liability whereas during cross-examination she deposed that the accused was liable only to pay the amount reflected in the cheques and the transaction in question was the only occasion when the accused borrowed money from her.

18. In addition to this, the accused has specifically denied his liability towards the complainant as evident from specific suggestions put to the complaint by learned defence counsel. The Court is of the view once the debt/liability has been disputed by the accused and the existence of account books has been admitted by the complainant, then the complainant was required to produce books of account maintained by her in ordinary course of business. Reliance in this regard can be placed upon the law laid down by Hon'ble Madhya Pradesh High Court in case titled as **Rajeev Soni vs. Indresh Singh** 2007(2) CCC 782 (M.P.). In the present case also, the accused has denied his debt/liability towards the

complainant and the complainant has specifically mentioned in the complaint about the existence of accounts books maintained in ordinary course of business, therefore the complainant was required to furnish the account books so that the liability of the accused towards the complainant could have ascertained by the Court but for strange and unknown reasons, the complainant did not furnish any account books or ledger books maintained in ordinary course of business which further raises doubt over the complainant's version. Further, the law has been settled by the Hon'ble Supreme Court of India, in case titled as M.S. Narayana Menon @ Mani Vs. State of Kerala and another....2006(3) CCC 468 (S.C.) wherein it has held that "in case of dishonour of a cheque (alleged to be issued towards outstanding dues) in business dealing, if account books not produced by the complainant, the contention of accused that cheque was issued as security can be believed and the conviction can be set aside."

After minutely considering the above mentioned contradictions in the averments of complaint and evidence led by the complainant, it is crystal clear here that two diametrically opposite versions of complaint have come on record. The averments of the complaint have been proved to be false by the testimony of complaint herself which inturn has shattered the entire case. Last but not the least, the Court is of the view that in light of these material contradictions elucidated by the defence from the evidence of complaint, the fact that the complaint

did not reflect the amount lent to the accused in her Income Tax Returns has gone to establish to a greater extent that the entire complaint case was based on false and completely devoid of merits.

Considering all these facts and circumstances of the case in toto, the Court is of the view that the accused has been successful in elucidating sufficient material from the evidence of complaint to discharge the initial onus place upon him and accordingly the onus was shifted upon the complainant to prove her case beyond all shadows of reasonable doubt but, as discussed above, she failed to do so.”

Learned counsel for the complainant submits that the Court has not considered the documents Ex.CW1/B and CW1/C issued by the respondent-accused to the petitioner. On presentation of these cheques for encashment, the same were dishonoured vide memos dated Ex.CW2/A and CW2/B respectively. Therefore, the requirement of Section 138 of the Act are complied with. Learned counsel further argues that in view of Section 139 of the Act burden to rebut the evidence lies upon the accused, failing which it becomes clear that the cheques were given by the accused to the complainant in discharge of his liability.

I have heard learned counsel for the applicant. The very basis on which the learned trial Court has dismissed the complaint is referred in para Nos.17 and 18 of the judgment, wherein it has been observed that the respondent-accused has relied upon the evidence led by the complainant i.e. her cross-examination recorded on 22.7.2014. Having perused the averments of the complaint and evidence led by the

complainant, the defence has been successful in elucidating sufficient material from the evidence of complainant to discharge the initial onus placed upon him and accordingly the onus was shifted upon the complainant to prove her case beyond all shadows of reasonable doubt.

It is stated in the complaint that the accused was on business terms with the complainant and used to borrow money from her from time to time, whereas during cross-examination she has deposed that she was not running any business and has no knowledge regarding the business of the accused. Similarly, the complainant has failed to produce any accounts books or similar documents maintained by her, which could substantiate the fact that the accused borrowed money from the complainant-petitioner. Furthermore, the complainant though has mentioned that the cheques were issued in discharge of part debt/liability, but during cross-examination, the complainant has deposed that the accused was liable to pay the amount reflected in the cheques when the accused has borrowed money from her. Thus, the petitioner-complainant has failed to establish any monetary liability of the accused towards her. It is for the complainant to produce the statement of accounts, wherein transactions can be established between the complainant and the accused. But the complainant has miserably failed to produce any accounts qua transactions entered between the complainant and the accused. Reliance can be placed on the judgment of the Hon'ble Apex Court in the case of **Ashok Kumar vs. State of Rajasthan** 1991(1) SCC 166, wherein it has been held that interference in an appeal against acquittal would be called for only if the judgment under appeal is perverse

or is based on misreading of evidence.

Learned counsel for the applicant-complainant has failed to point out any misreading of evidence by the trial Court. Contrary to it, the applicant-complainant himself has not produced any evidence which may establish any transaction as entered between the complainant and the respondent-accused.

No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the applicant.

Thus, no interference is warranted in the impugned order. Accordingly, finding no merit in the contention of the learned counsel for the applicant, the prayer made in the present application under Section 378(3) Cr.P.C. for special leave to appeal is declined.

The application is dismissed.

April 09, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE