

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

**Criminal Misc. No. A-282-MA of 2015 (O&M)
Date of decision: 03.12.2015**

Amit Kumar

..Applicant

Versus

Yogesh Arora

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. Ashok Kaushik, Advocate
for the applicant.

Daya Chaudhary, J.

CRM-5590 of 2015

There is a delay of 18 days in filing the application for grant of leave to appeal against judgment of acquittal.

Application is allowed as per the grounds mentioned therein and delay of 18 days in filing the application is condoned.

CRM-A-282-MA of 2015

The present application has been filed under Section 378(4) of the Code of Criminal Procedure for grant of leave against the judgment of acquittal dated 13.11.2015 passed by the Additional Chief Judicial Magistrate, Palwal, whereby, the accused-respondent has been acquitted for offence punishable under Section 138 of the Negotiable Instruments Act (for short 'NI Act').

A complaint was filed against the accused-respondent under Section 138 of the NI Act stating therein that the accused borrowed a sum of ₹4,25,000/- from the complainant in the month of February 2012 for a period of two months and in discharge of said liability, the accused issued a cheque bearing No.015860 dated 02.05.2012 for ₹4,25,000/- from his account in favour of the complainant. At the time of issuance of said cheque, the accused assured the complainant that the cheque would be encashed on its presentation. On his assurance, the complainant presented the cheque for encashment through its banker i.e., State Bank of India, Branch at Escort Nagar, Faridabad but it was returned vide memo dated 08.05.2012 with the remarks "Drawers Signature incomplete". An intimation in this regard was received by the complainant on 09.05.2012. Thereafter, a legal notice was served by the complainant through his counsel to call upon the accused to pay the amount of cheque in dispute within a period of 15 days from the date of receipt of legal notice but the accused failed to make the payment of cheque in dispute.

The complaint was presented on 07.06.2012. In preliminary evidence, the complainant examined himself as CW1 and tendered his affidavit Ex.CW1/A and also tendered documents i.e., Cheque Ex.C1, Memo Ex.C2, Legal Notice Ex.C3, Receipt Ex.C4. The accused was summoned to face trial vide order dated 24.07.2012 and he appeared before the trial Court on 31.10.2012. Thereafter, notice

of accusation was served upon the accused. After serving notice of accusation, the complainant examined Akash Garg Assistant Manager as CW1, who proved the cheque Ex.C1, Meena Mehta, Assistant Manager as CW2, who proved cheque return memo Ex.C2 and complainant himself appeared as CW3 and tendered his affidavit Ex.CW3/A. He also proved cheque Ex.C1, Memo Ex.C2, Legal Notice Ex.C3 and Receipt Ex.C4.

Thereafter, statement of accused under Section 313 Cr.P.C. was recorded on 04.08.2014 wherein the accused denied all the allegations levelled against him.

In defence, the accused tendered documents i.e., Ex.D1 copy of complaint, Ex.D2 copy of statement of Sandeep and Ex.D3 copy of order passed in case titled as Sandeep vs. Yogesh.

On appraisal of evidence available on record and after hearing counsel for the parties, the trial Court dismissed the complaint of the applicant-complainant and the accused was acquitted of the charge levelled against him.

Learned counsel for the applicant submits that the trial Court has acquitted the accused without appreciation of evidence available on record. The version of the complainant has not been believed whereas there was sufficient evidence available on record in support of his version. All the witnesses examined by the complainant proved and corroborated his statement. The cheque in dispute was given to the complainant and the same was dishonoured. There was

no reason to disbelieve the evidence produced by the complainant and as such, all ingredients of Section 138 of the NI Act are there, still the accused has been acquitted of the charge. Learned counsel also submits that only on the basis of presumption, the accused has been acquitted of the charge.

Heard arguments of learned counsel for the applicant and have also perused the judgment passed by the trial Court as well as other documents available on the file.

For resolving the controversy in hand, Sections 118 and 139 of the NI Act are necessary, which are reproduced as under: -

“Section 118: Presumptions as to negotiable instruments- Until the contrary is proved, the following presumptions shall be made: -

(a) of consideration; that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date; that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance; that every accepted

bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d)as to time of transfer; that every transfer of a negotiable instrument was made before its maturity;

(e)as to order of indorsements; that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f)as to stamp; that a lost promissory note, bill of exchange or cheque was duly stamped ;

(g)that holder is a holder in due course; that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

Section 139.Presumption in favour of holder-

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability.”

On perusal of statement of the complainant, it has come on record that in his cross-examination, he has admitted that he is income tax payee and from the last six years, he has furnished ITR but he has not shown the amount of cheque in dispute in Income Tax Return. He has stated that he has borrowed this amount from his father as his father retired in December 2013 from Agricultural Department. Neither he has received anything in writing from his father nor there was any document to show that the amount was borrowed from him. It has also not been proved on record that he maintained any accounts. Moreover, he has also not produced any account statement to show that he has taken amount from his father. As per statement of complainant, his father retired in December 2013 from Agricultural Department and the amount in question was given to the accused in February 2012 much prior to his retirement. The accused has placed on record three documents Ex.D1 to Ex.D3. Ex.D1 is copy of complaint filed by brother of the complainant in the year 2010 and two cheques amounting to ₹55,000/- have also been mentioned. Said cheques were returned due to insufficiency of funds and thereafter, complaint was filed. No doubt, the complaint was

dismissed as withdrawn but it shows that the cheque in dispute is also of the same series on the basis of which, earlier complaint was filed, which was dismissed as withdrawn. It has specifically been mentioned by the trial Court that it cannot be ruled out that the cheque in dispute was not misused as taken as a defence by the accused.

The complainant has failed to prove as to in which capacity, he had paid such a huge amount without any document. The complainant has also failed to prove his case and the presumption goes against him. The trial Court considered the submissions and by considering the evidence on record, no case was made out against the accused and he was acquitted of the charge.

Learned counsel for the applicant is not able to prove as to how the finding recorded by the trial Court is contrary to the evidence or law. Hence, the present application for grant of leave to appeal against judgment of acquittal is dismissed.

03.12.2015
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(DAYA CHAUDHARY)
JUDGE