IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No. A-531-MA of 2015(O & M)
Date of Decision:-26.5.2015

Ravinder Pal

...Applicant

Versus

Krishan Lal

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Kashish Garg, Advocate
for the applicant.

HARI PAL VERMA J.

CRM No.10542 of 2015

This is an application seeking condonation of delay of 31 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 31 days in filing the appeal is condoned.

CRM-A-531-MA of 2015

The applicant-complainant has filed the present application under Section 378(4) read with Section 482 of the Code of Criminal Procedure for grant of special leave to appeal against the order of acquittal dated 25.11.2014 passed by learned Judicial Magistrate 1st Class, Faridkot.

Briefly stated the applicant-complainant has filed a complaint against the respondent-accused under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called 'the Act'). As per the complaint, the accused has taken cash amount of Rs.3,75,000/- from the applicant-complainant and in order to discharge his liability, issued a cheque No.842851 dated 9.1.2012 for an amount of Rs.3,75,000/- of the Centurion Bank of Punjab Limited, now HDFC Bank Limited, Faridkot. On presentation of the said cheque through his banker i.e. the State Bank of Patiala, Branch Faridkot, it was sent for collection to the banker of the accused i.e. Centurion Bank of Punjab Ltd. now HDFC Bank Limited, Faridkot, but the said cheque was dishonoured vide memo dated 10.1.2012 with remarks “Account closed”. The applicant-complainant informed the accused about dishonouring of cheque. However, accused requested the applicant-complainant that he will return the amount within few days and further requested not to initiate any legal proceedings against him. When despite having served with the legal notice, the amount was not refunded, the applicant was constraint to file the present complaint.

The applicant-complainant examined himself as CW1 in his preliminary evidence and on the basis of this evidence the respondent-accused was ordered to be summoned by the trial Court vide order dated 21.8.2012 under Section 138 of the Act. In support of his evidence the complainant while appearing as CW1, has tendered into evidence his affidavit as Ex.CW1/A in the form of examination-in-chief and reiterated the contents narrated in the complaint. He further proved the documents including original cheque Ex.C1, memos Ex.C-2 and C-3, copy of legal notice Ex.C-4, postal receipts Ex.C-5 and C-6 and acknowledgements Ex.C-7 and C-8 and closed his evidence.

The accused has got his statement recorded under Section 313 Cr.P.C. wherein he was confronted with all incriminating evidence against him. He pleaded innocence and rather false implication in the case.

Learned trial Court vide judgment dated 25.11.2014 has acquitted the respondent-accused for the offence under Section 138 of the Act.

Learned counsel for the applicant-complainant submits that once the accused has admitted his signature on cheque, the offence under Section 138 of the Act stand committed and the accused is liable to be convicted. He further submits that in view of the judgment rendered in ***T. Vasanthakumar vs. Vijayakumari*** ***2015(3)*** *Recent Apex Judgments (R.A.J.) 222,* once it is established that the accused has signed the cheque, the presumption need to be rebutted by the accused to raise a defence that there is no existence of legal enforceable liability. He submits that the respondent has borrowed Rs.3,75,000/- from the complainant and in order to discharge his legal liability, the respondent-accused has issued a cheque Ex.C-1 in favour of the applicant-complainant.

The impugned order dated 25.11.2014 nowhere suggests that the applicant has placed any cogent document from where it can be inferred that he has advanced the loan. Even, during his cross-examination, he has not mentioned any date, month and place of giving the cash, and this fact was not even recited in the complaint, legal notice and affidavit. No such evidence has been placed on record to support his contention that he has shown this amount in his income-tax return or any other record. The complainant has only stated that this amount was given to him by his parents, But no such evidence has come on record, which can established the possession of said amount. In the case of ***Vijay vs. Laxman and another*** *2013(1) RCR Criminal*, the Hon'ble Supreme Court of India has held that when there is no documentary or other material on record to prove loan transaction, it is a fatal defect and on this basis no conviction can be ordered. Such defects regarding date of payment of loan are missing in the complaint.

From the record, it is found that the complainant himself did not possess sufficient funds rather depending upon his parents as it is the admitted case of the applicant that he borrowed this amount from his parents. But no such evidence has been placed on record. The trial Court has rightly relied upon the judgment of ***K. Parkashan versus P.K. Surenderan*** *SC 2007(4) RCR (Criminal)* to support his contention that when complainant himself had not having sufficient funds and used to borrow the same from his parents and others, failed to show that he had any financial capacity to advance such huge amount, therefore, the complaint was dismissed.

The complainant has failed to establish his case of advancing loan to the accused, so as to raise the presumption contemplated under Section 139 of the Act. Mere signing of cheque is not sufficient to conclude the commission of offence under Section 138 of the Act.

Accordingly, I find no merit in the present application and the same is hereby dismissed.

May 26, 2015 **(*HARI PAL VERMA*)**
Vijay Asija ***JUDGE***