

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

CRM-A No.863-MA of 2014 (O&M)
Date of decision: 30.03.2015

Amit Kantiwal

-----Applicant (s)

V/s

Mukesh Mittal

-----Respondent(s)

**and connected case being
CRM-A No.864-MA of 2014 (O&M)**

Pardeep Kumar Gupta

-----Applicant (s)

V/s

Mukesh Mittal

-----Respondent(s)

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. Sudhir Aggarwal, Advocate
for the applicant(s).

HARI PAL VERMA, J (Oral).

This order of mine shall dispose of two separate applications filed under Section 378(4) CrPC seeking permission to grant special leave to appeal against the orders dated 1.11.2013 passed by Judicial Magistrate Ist Class, Gurgaon, whereby the accused-respondents have been acquitted from the charges under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act"). Since both the

applications are against same accused namely Mukesh Mittal and the facts of both the applications are more or less similar, the same are being disposed of by way of common order. However, for the facility of the disposal of these cases, facts have been taken from CRM-A-863-MA-2014.

The complainant had filed the present complaint against the respondent for commission of offence punishable under Section 138 of the Act on the premises that the complainant is running a readymade cloth business in the name and style of M/s Amit Collections. The accused is running a Kiryana business in the name and style of M/s Mittal Enterprises. The accused had taken a friendly loan of Rs.5 lacs from the applicant with a promise to return the same within two months and in discharge of his liability, the respondent had given a cheque bearing No.249627 dated 30.5.2012 for an amount of Rs.5 lacs. However, as per the assurance of the accused, when the cheque was presented for encashment, the same was returned with the remarks of "insufficient funds and alteration in dates". Accordingly, legal notice dated 28.7.2012 was sent to the respondent-accused, but still, he failed to make the payment. Thus, the complainant filed a complaint under Section 138 of the Act on 29.8.2012. On the basis of the contents of the complaint and documents supplied, notice of accusation was served upon the respondent vide order dated 15.10.2012 of learned Judicial Magistrate Ist Class, Gurgaon.

In support of his case, the complainant himself appeared as CW-1 and tendered his affidavit as CW-1/A in his evidence. The complainant also examined Constable Manoj as PW-2. In his evidence, the complainant tendered a copy of application dated 2.7.2012 (Ex.C1), original cheque (Ex.C2), deposit slip (Ex.C3), return memo. (Ex.C4), Legal notice (Ex.C5), postal receipts (Ex.C6 and Ex.C7) and returned envelopes (Ex.C8 and Ex.C9). The evidence of the complainant was closed on 4.7.2013. However, the accused, in his statement under Section 313 CrPC, denied all the allegations in the complaint.

Learned trial Court vide judgment dated 1.11.2013 has acquitted the respondents-accused and observed as under:-

18. So, from the above discussion, it has come out that the accused had stopped the payment of the cheque due to the reason "cheque lost" and a DDR was also lodged in this regard to the police station (as admitted by the complainant himself). This evidence is sufficient to rebut the case of the complainant and now the onus is again on the complainant to prove its case but complainant did not examine any eye witness of the friendly loan transaction and also in document Ex-C1 the complainant stated that he along with some other members of the market went to accused and the accused admitted his liability in front of them but none of those members of the market has been examined.

19. Further, when the accused is taking the defense that the cheque has been wrongly dishonoured, and the tick mark on "funds insufficient" was put by the

complainant himself, and it has also come in the evidence of DW1 that no dishonor charges has been deducted from the account of the both the parties, it has become doubtful that in what conditions the cheque has been dishonoured and the evidence of the bank official became necessary to prove the exact reason of the dishonor of the cheque in dispute.”

It is against the judgment of acquittal dated 1.11.2013, the applicant has filed the present application.

Learned counsel for the applicant has contended that the respondent-accused had taken a friendly loan of Rs.5 lacs from him and in discharge of his liability, a cheque for an amount of Rs.5 lacs was also issued. However, on presentation of the said cheque, the same was dishonoured with the remarks “insufficient funds and alteration in date”. Since there is no suggestion in the examination of the complainant about the signature on the cheque, the signature of the respondent-accused is not disputed. In order to rebut the presumption, it was argued on behalf of the respondent-accused that the cheques in dispute were lost by the accused and a DDR (Ex.DW2/A) was lodged in the police station in this regard and payment against the aforesaid cheques was also stopped by the accused by writing a letter to the bank. It is the case of the respondent-accused that the complainant has found the cheques from somewhere and misused the same. It was denied that the accused had ever availed any loan from the complainant. In order to prove the fact

that the accused has not availed any loan, as being pleaded by the complainant, the respondent-accused has invited the attention to the cross-examination of the complainant, wherein the complainant has stated that he gave loan to the accused on 1.4.2012 in the presence of Bhim Sethi, Naveen Sharma, Pankaj Gupta, but none of these persons were examined as a witness in support of his case. Further, the complainant has admitted that he knew that the accused had lodged a DDR (Ex.DW-2/A) on 2.6.2012 regarding loss of the cheques. The fact that the complainant had earlier also presented the cheque in PNB bank and the said bank returned the cheque because of cutting on it and the same is admitted by the complainant in his cross-examination, makes it doubtful that the tick mark on insufficient funds was put by the bank officials and for that purpose, the evidence of bank officials was necessary. But for the reasons best known to the complainant, even the bank officials have not been examined. Moreover, the factum of earlier presentation of cheques in PNB bank was not disclosed by the complainant in his complaint or affidavit and no explanation if forthcoming for the same.

The accused in his defence examined DW-1 who tendered document Ex.DW-1/C wherein it is stated that payment against the cheque in dispute along with some other cheques was stopped by the accused on 30.6.2012 on account of loss of cheques. In this manner, it is sufficiently proved that the

respondent-accused has stopped the payment of cheque for the reason that the cheque is lost and DDR was lodged with the police. The fact of lodging of DDR has been admitted by the complainant himself. Considering the fact that the complainant withheld the material witnesses i.e. the witnesses of advancing friendly loan and has also not disclosed the fact that the cheque was earlier presented in PNB bank, is clearly sufficient to draw adverse inference against the complainant that no such cheque was ever issued, as the accused had already lodged a DDR with the police. The cheque is shown to have been issued on 30.5.2012, whereas the DDR was lodged on 2.6.2012. Furthermore, it is the complainant who himself tick marked on "funds insufficient", but it has been doubted as to in what conditions the cheque has been dishonoured. However, this fact can safely be supported only by producing the bank officials, but no such evidence on behalf of the bank has been produced.

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 orders. Accordingly, finding no merit in the contention of the learned counsel for the applicants, the prayer made in the present applications under Section 378 (4) Cr.P.C. for special leave to appeal are declined. The applications are dismissed.

Since the applications for leave to appeal have been dismissed on merits, no further orders are required to be passed

in the applications under section 5 of the Limitation Act for
condonation of delay in filing appeals.

March 30, 2015
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(HARI PAL VERMA)
JUDGE