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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No. AS-64 of 2016 (O/M)
Date of decision : 21.4.2016

Manoj Kumar Appellant

Versus

Mahesh Kumar and another Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Aditya Dassaur, Advocate, for,
Mr. C.L. Verma, Advocate, for the appellant.

Mr. Shiv Kumar, Advocate, for respondent No. 1.

Mr. Parveen Aggarwal, Deputy A.G. Haryana,
for respondent No. 2.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
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KULDIP SINGH J. (ORAL)

CRM No. A-38-MA of 2014

The Registry is directed to assign number to the appeal, in view of order passed by a Coordinate Bench of this Court on 3.9.2015, granting leave to file appeal against the judgment of acquittal dated 19.10.2013, passed by the learned Judicial Magistrate 1st Class, Faridabad.

Main appeal

Impugned in the present appeal is the judgment dated 19.10.2013, passed by the learned Judicial Magistrate 1st Class,

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Faridabad, vide which the complaint filed by the present appellant under Section 138 of the Negotiable Instruments Act, 1881, was dismissed.

As per the case of the complainant, he advanced a loan of Rs. 3,00,000/- to the accused on 20.4.2007, for the purpose of purchasing a plot at Kama in Rajasthan. The accused issued a cheque bearing No. 797297 dated 9.3.2009, for Rs. 3,00,000/-, drawn on Indian Bank, Sector-22, Faridabad, in favour of the complainant, for the discharge of the said liability. The said cheque when presented before the Bank was returned back as unpaid with the remarks 'Account Closed'.

Learned proxy counsel appearing for the learned counsel for the appellant has argued that the accused has admitted his signatures on the said cheque. Therefore, presumption under Sections 138 and 139 of the Negotiable Instruments Act, 1881, was raised against the accused and it is for the accused to rebut it. The lower Court has wrongly held that the persons, in whose presence the loan was advanced, were not examined by the complainant. It is stated that once the cheque is proved and the accused failed to discharge the burden, the case of the complainant stands proved. Reliance has been placed on the authority of the Hon'ble Supreme Court in Hiten P. Dalal Versus Bratindranath Banerjee, 2001 (3) RCR (Criminal) 460.

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I have heard the learned counsel for the parties and have also carefully gone through the file.

It comes out that the lower Court has taken the view that when the loan of Rs. 3,00,000/- was advanced for the purpose of purchasing a plot by the accused, no receipt was taken. The persons, in whose presence the loan was advanced, were not examined. The stand of the accused in statement recorded under Section 313 Cr.P.C. is that he never issued the cheque to the complainant for discharge of his debt or liability. Rather, he claims that he has given the blank cheque as security after receiving the prize money in chit fund lottery to the brother of the complainant, namely, Vinod, Advocate, in the year 2005. It is admitted by the complainant that accused was working in Aluminium business with the uncle of the complainant. The complainant also claims that he had borrowed the money from his father to advance the loan. When the accused was running a business with the uncle of the complainant, then at the first instance, he is likely to approach his business partner for loan. The complainant has nowhere explained as to why he would go to the extent of borrowing the money from his father, so as to advance the loan to the accused. Therefore, the lower Court has rightly held that the legally enforceable debt is not proved. The lower Court has taken one of the two possible views. There is no patent illegality or perversity in the judgment of acquittal.

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Therefore, in the appeal against acquittal, this Court does not find any ground to interfere in the judgment of acquittal. Hence, the present appeal is dismissed.

(KULDIP SINGH)
JUDGE

21.4.2016
sjks