

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-442MA- 2013(O&M)
Date of decision: 28.04.2016

Pawan Sharma

.....Applicant

versus

Sandeep Kumar and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Narender Kaajla, Advocate for the applicant
Mr.Sandeep Kumar, Advocate for
Mr.Sandeep Goyat, Advocate for the respondents

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

The complainant has directed this application for grant of leave to appeal against the judgment dated 16.5.2011, passed by the learned Judicial Magistrate 1st Class, Hisar, vide which the complaint filed by the complainant-applicant under Section 138 of Negotiable Instruments Act, 1881 was dismissed and the accused were acquitted.

According to the complainant, both the accused borrowed Rs.40,000/- from him on 16.5.2010 for their personal necessity.

When the complainant demanded the loan amount on 14.8.2010,

both the accused in discharge of their liability, issued a cheque bearing No.754095 dated 16.8.2010 for Rs.40,000/- drawn on State Bank of India, Patel Nagar, Hisar in favour of the complainant from their joint account. The cheque when presented before the Bank for encashment was dishonoured. After issuing the mandatory notice to the respondents/ accused, complaint was filed.

After recording the evidence of the complainant, statement of the accused under Section 313 Cr.P.C. and recording defence evidence, learned Magistrate came to the conclusion that the ingredients of Section 138 of Negotiable Instruments Act, 1881 are not fulfilled. Accordingly, the complaint was dismissed and the accused were acquitted.

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

In the statement recorded under Section 313 Cr.P.C., the accused has taken the stand that he had not obtained any loan from the complainant, rather marriage of his sister was fixed in the month of May 2010. The complainant offered the accused that in case he needs clothes etc. and Lehanga for his sister, the complainant can arrange these items from his known shopkeeper and offered him a rent scheme on Lehanga. Complainant assured that he will arrange the Lehanga on rent at reasonable rate. In this process on 14.5.2010, the complainant charged Rs.4,000/- and obtained a blank signed cheque as security from the accused for rent of two Lehangas. Thereafter, two Lehangas were selected and booked by the complainant on the choice of Smt.Paramjeet and both the accused

from the shop of Chhabra Saree Mahal. To support his contention, accused produced his account statement (Ex.D1), marriage card of his sister (Ex.D2) and receipt of booking of Lehangas (Ex.D3). He stated that after completion of marriage ceremonies, the complainant visited his house on 16.5.2010 and asked him to return Lehangas to Chhabra Saree Mahal. The Lehangas were given to the complainant but complainant neither returned the blank cheque nor the receipt. The accused in defence also examined Smt.Paramjeet, who had selected the Lehangas.

Learned Magistrate, after discussing the evidence, came to the conclusion that the date of alleged loan is 16.5.2010. The cheque is dated 16.8.2010. Learned Magistrate observed that the complainant has failed to prove as to for what purpose the loan was given. The complainant stated that accused are his neighbours and are on visiting terms. It is also not a denying fact that the marriage of sister of the accused Sandeep Kumar was fixed for 15.5.2010. After weighing the defence evidence, learned Magistrate came to the conclusion that possibility of booking of Lehangas for the marriage of sister of the accused Sandeep Kumar cannot be ruled out. After taking into consideration that the complainant has failed to disclose the purpose for which the alleged loan was advanced, learned Magistrate believed the defence story and dismissed the complaint.

I am of the view that learned Magistrate has taken one of the two possible views. When one of the two possible views are possible, the Magistrate could accept one of the versions. In this way, there is no illegality or perversity in the impugned order, which

warrants interference by this Court in judgment of acquittal.

Accordingly, the present application for grant of leave to appeal is dismissed.

28.04.2016

gk

**(Kuldip Singh)
Judge**