IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-460-MA-2013 (O&M)
Date of decision : 15.07.2016

Upma Kakkar ...Applicant-Appellant

Versus

Naresh Kumar ...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. K. R. Dhawan, Advocate for the applicant-appellant.

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JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal has been filed against the judgment dated 01.04.2013, passed by learned Judicial Magistrate Ist Class, Chandigarh whereby, the accused-respondent was acquitted of the charges framed against him under Section 138 of Negotiable Instrument Act, 1881 (for short ' the Act').

It is contended that the appellant had advanced a loan amounting to ₹1,00,000/- to the respondent through an account payee cheque and to discharge his liability for the same, the respondent issued cheque Ex.C3 in favour of the appellant. However, on the presentation of the same, it was dishonored by the bank with the remarks 'insufficient funds'. It is asserted that in this manner, the appellant has proved all the material ingredients to constitute an offence under Section 138 of the Act

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against the respondent. Lastly, he states that the complainant is not engaged in the business of money lending as has been wrongly held by the learned trial Court.

I have heard the learned counsel and carefully perused the entire record on file.

The case of the complainant is that on 09.07.2001 through her general attorney Hari Krishan, she had advanced a loan amounting to ₹1,00,000/- to the respondent and in consideration thereof, the respondent had executed a loan agreement, Ex.C2, whereby he agreed to repay the amount in 21 installments along with interest @ 27% per annum. Further for the loan liability, the respondent had issued a cheque, Ex.C3 in favour of the appellant, however, the same was dishonoured with the remarks 'insufficient funds'. On the other hand, the respondent had asserted that in the year 1998, he had taken a loan from Sant Kumar, who is the father-in-law of complainant and said Sant Kumar, had obtained blank signed papers and blank signed cheques in lieu of said loan. Though, the said loan had already been repaid by the respondent but to extract more money from him, the appellant had misused those documents and cheques. The appellant himself withdrew the amount of loan in question i.e. ₹1,00,000/- from the account of the respondent, which the appellant had earlier transferred. Further, DW5-Sumit Arora, Handwriting Expert deposed that the person who had filled up the body of cheque had filled up the body of loan agreement. Therefore, it can safely be inferred that the body of blank signed cheque was filled by the complainant without the consent of the respondent as it is an admitted fact

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that the body of loan agreement was filled up by Sant Kumar. At the time of execution of loan documents, attorney of Upma Kakkar namely, Hari Krishan was not having any authority as the general power of attorney, Ex.C1 allegedly executed on 24.12.2001 and loan transaction in question is of 09.07.2001. However, without adverting to the merits of the case, the trial Court dismissed the complaint being not maintainable while observing the appellant to be an unregistered money lender. The trial court had framed the criteria i.e. Motive, Number of Transactions, Relation with borrower and Modus-operandi to determine whether the appellant is money lender or not. In the instant case, the advancement of loan to the respondent is solely for earning the profit which clearly depicts from the terms of loan agreement. Through the account books of the appellant, it emerges that she is advancing the loan as a matter of routine even to the strangers and reduced the same in writings and obtain some sureties in this regard. The appellant has been advancing loan since 1997; maintaining account books; and disclosing names of loanees to IT Department. Even during cross-examination of the appellant-Upma Kakkar, recorded in some other case Ex.D1/A, she has admitted the fact that she is not having money lending licence or not even at the time of advancing the loan in question. The cross-examination of attorney of complainant CW1-Hari Krishan categorically proves that the complainant is a money lender. Admittedly, the complainant had once applied for money lending license, but it was not granted. The complainant had no right to sue the respondent in the given circumstances. Therefore, this Court feels that the trial Court had rightly dismissed the

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complaint of the appellant being not maintainable. In the instant case, the complainant being the unregistered money lender, the liability cannot be termed as legally recoverable debt.

It is a settled law as has been held in ***C. Antony Vs. K.G. Raghavan Nair***, 2002(4) RCR (Criminal) 750 that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

Keeping in view the above, the finding of acquittal recorded by the trial court cannot be said to be perverse or contrary to the material on record. In fact there is no infirmity in the reasoning assigned by the trial court for acquitting the respondent, this Court feels that learned Judicial Magistrate Ist Class, Chandigarh, has passed the impugned judgment dated 01.04.2013, after appreciating the entire facts and circumstances of the present case and no other view is possible.

Accordingly the special leave to appeal is declined.

Dismissed.

15.07.2016 **(JITENDRA CHAUHAN)**
ashok **JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No

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