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

CRM-A-589-MA of 2016 (O&M)
Date of Decision : 05.07.2017

Bishan Sarup **...Applicant**

Versus

Jarnail Singh **...Respondent**

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Rajesh Narang, Advocate for the applicant.

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Anupinder Singh Grewal, J.(Oral)

CRM No. 9785 of 2016

This application has been preferred seeking condonation of delay of 42 days in filing the appeal.

For the reasons stated in the application, which is supported by an affidavit, delay of 42 days in filing the appeal is condoned.

Application stands disposed of.

CRM-A-589-MA-2016

This application for leave to appeal is directed against the order of the trial Court dated 10.11.2015, whereby the respondent/accused has been acquitted in a complaint preferred by the applicant/complainant under Section 138 of the Negotiable Instruments Act.

It is the case of the applicant/complainant that the respondent/accused took a friendly loan of ₹90,000/- from him on 23.11.2013 for one month without interest and in lieu thereof the respondent/accused issued a post dated cheque bearing No. 525881 dated 24.12.2013 amounting to ₹90,000/- drawn on HDFC Bank Ltd., Sri Muktsar Sahib, which was handed over to the applicant/complainant on 23.11.2013. The cheque was presented for clearance on 28.12.2013 in Punjab National Bank, Main Branch, Sri Muktsar Sahib and was returned unpaid with a memo dated 28.12.2013 issued by HDFC Bank Limited, Sri Muktsar Sahib with the remarks "Account Closed".

Notice was issued to the respondent/accused on 09.01.2014, which was received back on 28.01.2014 with the report dated 10.01.2014 that none had come forward to claim it and it was returned unclaimed.

The trial Court after recording the evidence has acquitted the accused primarily on the ground that the first ingredient of offence under Section 138 of Negotiable Instruments Act that the cheque should have been issued in the discharge of legally enforceable debt, has not been satisfied. It was the case of the complainant that loan of ₹90,000/- was given to the accused without interest but the complainant could not produce on record any document or any other evidence in support of his case that the amount had indeed been advanced as a loan to the accused. Neither any pronote had been executed nor any receipt had been issued by the accused for the payment of the amount. No witness had been examined to state that the amount had been paid in his presence. The applicant/complainant had not been able to explain the source of the amount of ₹90,000/-, which he allegedly advanced to the respondent/accused. Although in cross-examination the applicant/complainant has stated that the amount was withdrawn from Post Office but neither passbook nor any entry to that effect had been produced on record.

Therefore, the view taken by the trial Court is a plausible one and I do not find any good ground to interfere with the finding of acquittal recorded by the trial Court. Even otherwise, it is well settled that interference in appeal against acquittal would be called only when there is manifest illegality or perversity in the order of acquittal. Even if on the same facts another view is possible, no interference would be called for as in the order of acquittal the presumption of innocence of the accused is further reinforced.

For these reasons, the application for leave to appeal stands dismissed.

(ANUPINDER SINGH GREWAL)
July 05, 2017 **JUDGE**
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Whether speaking/reasoned? **Yes**

Whether reportable? **No**