IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No. A-1594-MA of 2015
Date of Decision:-17.02.2016

Bhuwan

...Applicant

Versus

Vinay Kumar Kaushik

...Respondent

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. Jainainder Saini, Advocate
for the applicant.

HARI PAL VERMA J.

The applicant has filed the present application under Section 378(4) of the Code of Criminal Procedure seeking permission to grant special leave to appeal against the judgment dated 16.7.2015 passed by learned Judicial Magistrate 1st Class, Hisar, whereby complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called 'the Act') filed by the applicant was dismissed and respondent-accused was acquitted of the offence under the Act.

Briefly stated, the complainant has filed the complaint under the Act with the averments that the respondent-accused approached the complainant for a friendly loan of Rs.1,55,000/- for overcoming his financial crisis. The complainant had given the money and the accused assured him to repay the same in the near future. In discharge of his outstanding liability, respondent-accused had issued a cheque bearing No.505035 dated 09.12.2012 for Rs.70,000/- drawn on Canara Bank, Parao Chwok Branch, Hisar in favour of the complainant. However, when the cheque in question was presented for encashment by the complainant in his bank account with State Bank of Patiala, Railway Road Branch, Hisar, the cheque was dishonoured with the remarks "funds insufficient" vide bank return memo dated 11.12.2012. A statutory notice was issued within the stipulated period of 15 days to the respondent-accused but despite notice the amount was not paid, necessitating filing the complaint under the Act.

The complainant appeared as CW1 and tendered his affidavit Ex.CW1/A in his evidence. He also produced Ex.C1 original cheque, Ex.C2 bank memo, Ex.C3 legal notice and Ex.C4 postal receipt.

Thereafter after closing the evidence of the complainant, statement of accused under Section 313 Cr.P.C. was recorded. Accused has opted to lead defence evidence and had examined Dilbag Singh, Ahlmad as DW1, who had proved the documents Ex.D1 to D3. The defence counsel had also tendered Ex.D12 to D.21 and given up witnesses Dheeraj and Gurcharan.

In order to establish the liability, the learned trial Court has formulated the following points/questions :-

> "(A) Whether the cheque in question was issued/drawn by the accused and ground of dishonour is covered under Section 138 of the Act.
>
> (B) Whether the conditions provided in proviso a, b and c of Section 138 of the Act with Section 142 of the Act, have been complied with.
>
> (C) Whether the accused issued the cheque in discharge of his legally enforceable debt or liability."

Learned counsel for the petitioner has argued that the complainant is a taxi driver and he had advanced a friendly loan of Rs.1,55,000/- from his savings so as to overcome the financial crisis of the petitioner-accused. The said amount was repayable and it is in discharge of the legally enforceable liability, the accused issued the cheque bearing No.505035 dated 09.12.2012 for Rs.70,000/-.

I have heard learned counsel for the petitioner.

The judgment passed by the trial Court reveals that when the applicant was subjected to cross-examination, he deposed that he had given loan to the respondent-accused in cash in first week of June. Whereas in the complaint as well as deposition by the complainant, it is evident that the complainant has not mentioned any such detail i.e. the date and year when the amount of Rs.1,55,000/- was advanced by the complainant to the accused. Even in the cross-examination, he has deposed that he gave Rs.1,55,000/-, which were laying with him. The accused was also unable to tell his monthly income on the premises that the same depends on booking. In this manner, the applicant has failed to prove his financial capacity as well, which created doubt and the trial Court has rightly doubted the capacity of the complainant. Firstly, if the complainant states that he advanced the money, he is required to establish his source as well.

Taking into consideration the fact that the complainant has failed to establish the date and time when the money was advanced and the source of savings, this Court does not find any illegality in the impugned judgment.

Learned counsel for the applicant-complainant has failed to point out any misreading of evidence by the trial Court. Contrary to it, the applicant-complainant himself has not produced any evidence which may establish any transaction as entered between the complainant and the respondent-accused.

No other legal point, worth consideration, has either been urged or pressed by learned counsel for the applicant.

Thus, no interference is warranted in the impugned order. Accordingly, finding no merit in the conetntion of the learned counsel for the applicant, the prayer made in the present application under Section 378(4) for special leave to appeal is declined.

The application is dismissed.

February 17, 2016 **(HARI PAL VERMA)**
Vijay Asija **JUDGE**