IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-A- 1672 MA-2015(O&M)
Date of decision: 21.04.2016

Rakesh Sardana

…..Applicant

versus

Ashok Kumar and another

……Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.R.S.Bajwa, Advocate for the applicant

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. (Oral)

CRM No.32942 of 2015

For the reasons mentioned in the application, it is allowed and 4 days delay in filing the application for grant of leave to appeal stands condoned.

CRM-A- 1672 MA-2015

This order will dispose of application under Section 378(4) Cr.P.C. for grant of leave to appeal.

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

A complaint under Sections 138 and 142 of Negotiable Instruments Act, 1881 filed by the complainant against Ashok Kumar and his wife Sapna Rani was dismissed by learned Judicial

Magistrate 1st Class, Karnal vide judgment dated 28.7.2015.

It comes out that according to the complainant he has advanced a loan of Rs.6 lacs to both the accused being family relatives in May 2013 and that the accused had issued two cheques of Rs.3,00,000/- each on 20.6.2013, which were returned by the bank with the remarks 'funds insufficient'. It comes out that the complainant is a Dentist by profession. Complainant has claimed that he has given friendly loan, however, no receipt was obtained. It also comes out that complainant had advanced friendly loan to some other persons also, and the cheques issued by such other persons were also dishonoured. Therefore, the lower Court took the view that it is unlikely that the complainant will advance such huge amount of loan without obtaining any receipt or other documentary proof. Further lower Court held that the complainant claims that Rs.2,50,000/- were lying with him, whereas balance was withdrawn from the bank but he failed to produce any evidence from the bank that he has withdrawn the money.

Learned counsel for the applicant has argued that lower Court has observed that the signatures on the cheques are not disputed. Therefore, there is a presumption in favour of the complainant.

I am of the view that it is a judgment of acquittal. Lower Court has recorded the finding that the complainant has failed to prove the source of money and that he has also failed to prove that the loan, as claimed by him, was advanced. Therefore, there is no legally enforceable debt. The finding recorded by the lower Court cannot be called illegal or perverse. Therefore, there is no ground to interfere in the judgment of acquittal.

Hence, application for leave to appeal is dismissed.

21.04.2016 **(Kuldip Singh)**
gk **Judge**