IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-A-9 MA-2016 (O&M)
Date of decision: 15.02.2016

Vijay Kumar

…..Applicant

versus

Vivek Bharti

……Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.H.N. Sahu, 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)

The applicant has filed this application under Section 378 (4) of Cr.P.C. for grant of leave to appeal against the judgment of acquittal dated 5.11.2015, passed by the learned Judicial Magistrate 1st Class, Karnal. The applicant, who happens to be a constable in Haryana Police filed a complaint under Section 138 of Negotiable Instruments Act, 1881 stating that he had advanced a friendly loan of Rs.5,20,000/- to the accused, for which, the accused issued a cheque No.127701 dated 27.2.2013 drawn at Axis Bank, Karnal. However, the cheque was dishonoured for want of funds.

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

The lower Court has taken the view that though the accused does not deny his signatures on the cheque but he denies that cheque was given to the complainant or any loan was taken. It has also come in evidence that the complainant is having salary of Rs.28000/- to Rs.29000/- per month. The lower Court held that legally enforceable debt is not proved.

Learned counsel for the applicant claims that though the complainant belongs to village Goli, Tehsil Assandh, District Karnal but he was posted at Madhuban where the accused was staying and was known to him. The cheque was also issued at Syndicate Bank Madhuban. However, the complainant being a constable in Haryana Police, must be knowing the technicalities of law and that he is required to have some proof of advancing of loan to a person who was not even his kith and kin. Merely, if somebody is known or having firendly relation, loan of such huge amount can be not advanced by a person having salary of Rs.28000/- to Rs.29000/- per month. No document was got executed from the accused.

Under the circumstances, lower Court rightly held that the advancing of loan is not proved. Consequently, there is no legally enforceable debt. The lower Court has taken one of the two possible views. There is no illegality or perversity in the same.

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

15.02.2016 **(Kuldip Singh)**
gk **Judge**