IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.A-1778-MA-2014
Date of Decision: 26.04.2016

Kotak Mahindra Bank Limited

...Applicant(s)

Versus

Harminder Singh

...Respondent(s)

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. Inderpal Singh Parmar, Advocate
for the applicant.

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HARI PAL VERMA, J.

This is an application filed under Section 378(4) CrPC for grant special leave to appeal against the judgment of acquittal dated 20.8.2014 passed by learned Judicial Magistrate Ist Class, Ludhiana, whereby the complaint filed by the applicant-complainant under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act") has been dismissed and accused-respondent has been acquitted of the charge framed against him, as the applicant-complainant has failed to prove the guilt of the respondent-accused.

Briefly stated, the applicant-complainant had filed a complaint through its attorney and authorized signatory Sh. Navdip Singh against the respondent-accused under Section 138 of the Act with the allegations that the respondent-accused approached the complainant Bank at its branch office situated at SCO 120, 6th Floor, Feroze Gandhi Market, Ferozepur Road, Ludhiana and availed loan facility for an amount of Rs.4,32,359/- and entered into a loan agreement dated 30.1.2008. As per the agreement, he was required to pay the loan amount in 35 equated monthly instalments, but he defaulted in paying the instalments regularly. Accordingly, in order to discharge his liability towards the complainant-bank, the respondent issued a cheque No.834614 dated 2.3.2012 of Rs.4,25,000/- drawn on Centurion Bank of Punjab Limited, 15, San Plaza Building, Feroze Gandhi Market, Ludhiana in favour of the complainant-bank, as part payment of the amount, for which, the respondent-accused was in default at that time. The complainant-bank was also assured that the cheque can be encashed. Accordingly, the said cheque was presented for encashment, but it was dishonoured vide memo. dated 10.3.2012 with the remarks "Account Closed". The applicant served a legal notice upon the respondent on 20.3.2012, calling upon him to make the payment of the cheque amount, however, the respondent failed to make the payment, which led to filing the instant complaint.

At post notice evidence stage, Navdip Singh, authorized signatory of the applicant-bank himself stepped into the witness box as CW-1 and tendered into evidence his duly sworn affidavit Ex.CA along with attested copy of the attorney as Ex.C1, attested copy of cheque as Ex.C2, original memo. as Ex.C3, copy of notice as Ex.C4, original postal receipt as Ex.C5 and thereafter, closed his evidence.

Statement of the respondent-accused under Section 313 CrPC was recorded wherein all the incriminating material appearing against him was put to him, to which, he denied to have committed any offence and pleaded that the complainant has filed a false and frivolous complaint against him. It was stated that at the time of taking loan from the bank on 30.1.2008, 35 blank cheques were given to the bank, as instalment security and the cheque in question is one of them. He further stated that he never gave the cheque filled with an amount of Rs.4,25,000/- to the complainant and in this manner, the aforesaid cheque was misused and there is no liability to pay the same to the complainant.

Learned trial Court vide judgment dated 20.8.2014 dismissed the complaint, as the complainant failed to prove any legal liability of the respondent-accused against which the cheque in question was issued by him.

It is in these circumstances, the applicant-complainant has filed the present application 378(4) CrPC for grant of leave to appeal against the aforesaid judgment dated 20.8.2014.

Learned counsel for the applicant argued that in fact the respondent-accused failed to produce any evidence to rebut the legal presumption under Sections 118 and 139 of the Act and therefore, the respondent-accused having not discharged the onus upon himself, the complaint filed by the applicant was required to be accepted. Learned counsel referred to the statement of the respondent-accused, which reads as under:-

> *"Statement of Harminder Singh, Accused on SA.*
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> *I received the order of untraceable report of vehicle No.HR-37A-2848 from the Hon'ble Court of Ms. Gurpreet Kaur, PCS, Sub Divisional Judicial Magistrate, Amloh and submit the same before insurance company and some time may kindly be given to me for the purpose to get the insurance.*
>
> *RO & AC* *Sd/-*
> *Sd/- Harminder Singh* *JMIC 06.01.2014"*

Learned counsel argued that in view of the aforesaid statement of the respondent-accused that he be given some time to get the insurance is sufficient to establish that he has accepted the outstanding amount in principle and accordingly, had sought time to make payment after the release of the amount from the insurance company. He further argued that the Court below has wrongly believed the defence of the respondent-accused that the cheque in question was misused.

I have heard learned counsel for the applicant.

I have perused the statement of the respondent-accused Harminder Singh made under Section 313 CrPC, wherein he has stated that at the time of taking loan from the bank on 30.1.2008, 35 blank cheques were given to the bank, as instalment security and the cheque in question is one of them and the respondent-accused has never gave the cheque in question by filling the amount of Rs.4,25,000/- to the complainant. It is the complainant who has misused the blank cheque, despite there being no liability of the respondent to pay the same to the applicant. Thus, the respondent-accused has rebutted the presumption under Section 138 of the Act and therefore, onus was upon the complainant to lead further evidence to prove that the disputed cheque in question was actually given to him in discharge of his liability.

Therefore, this Court do not find any illegality in the impugned order and accordingly, the prayer of the applicant-complainant for grant of leave to appeal is declined.

The application is dismissed.

April 26, 2016 **(HARI PAL VERMA)**
AK **JUDGE**