IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-995-MA-2016 (O&M)
Date of decision : 25.10.2016

Jagdish Chander

...Applicant

Versus

Narinder Singh

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Inderjeet Singh, Advocate,
for the applicant.

JITENDRA CHAUHAN, J.

The applicant seeks special leave to appeal against judgment dated 10.03.2016 passed by the learned Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri (for short, 'the trial Court'), thereby acquitting the accused-respondent in a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

It is the case of the complainant, that the accused-respondent issued a cheque bearing No.558251 dated 10.02.2013 amounting to Rs.1,50,000/- drawn on Oriental Bank of Commerce, Branch Mehlanwali, Yamuna Nagar, in his favour in discharge of his existing liability. The cheque in question was presented by the complainant to his banker-UCO Bank, Branch Yamuna Nagar, but the same was dishonoured vide memo dated 15.02.2013 with the remarks - 'Funds insufficient'. The complainant issued legal notice dated 19.02.2013 to the accused calling upon him to make the payment within 15 days, but to no avail. Accordingly, the instant complaint was filed on 08.03.2013.

The complainant got recorded preliminary evidence and on finding a prima facie case, the accused was summoned to face trial under Section 138 of the Act.

In order to prove his case, the complainant examined himself as CW1 and tendered in his evidence his affidavit Ex.CW1/A along with the original cheque as Ex.C1, return memo as Ex.C2, copy of legal notice as Ex.C3, postal receipt as Ex.C4 and reply to the legal notice as Ex.C5. During his cross-examination, the complainant asserted that he had been earning about Rs.50,000/- per month through dairy farming but had not been filing any income tax returns. He further stated that he did not maintain any record of the income and expenditures. His bank balance was around Rs.13,000/- for a long time. He did not maintain any record with regard to his financial dealings with any person and he did not deposit any money in the bank. It also came up in his cross examination that he had no knowledge about the family of the accused, nor had he ever visited the house of the accused. He also admitted that there was no witness to any of the dealings which took place between him and the accused. Though he stated that he had advanced the money to the accused prior to the year 2013, but he did not remember the exact date, time or month of such an advancement. He also stated that he did not even know the mobile phone number of the accused. He had no knowledge whether his advocate had ever received any reply to the legal notice or not. He further denied having filed any affidavit in the present case. However, he refused the suggestion that the accused had never taken any money from him and further that the cheques of the accused were lying as security with one Vijay Kumar Dhawan and he has connived with Vijay Kumar Dhawan to file the present complaint.

Thereafter, the complainant closed his evidence. The statement of the accused under Section 313 Cr.P.C. was recorded to the effect that he was innocent and never took any money from the complainant. He neither knew the complainant nor issued the cheque in question in favour of the complainant. He further stated that he had in fact taken a loan from one Vijay Kumar Dhawan who took two blank but signed cheques as security, including the cheque in question. Thereafter, the money was returned to Vijay Kumar Dhawan, who did not return the cheques to him and colluded with the present complainant to file the instant complaint. The accused did not examine any witness in defence.

After hearing learned counsel for the parties and appreciating the evidence on record, learned trial Court dismissed the complaint and acquitted the accused-respondent of the charges framed against him.

Hence the instant application.

Along with the special leave petition, the applicant-appellant has also filed CRM-16003-2016 for leading additional evidence under Section 391(1) Cr.P.C. and has sought to produce on record documents viz., statement of one Surinder Singh Annexure A1, inquiry report Annexure A2 and order declaring the respondent as proclaimed offender Annexure A3. These documents cannot be said to be not in the knowledge of the applicant-appellant when he led his evidence before the trial Court. Moreover, this Court feels that the additional evidence sought to be produced is not necessary for the just decision of the case. The applicant/appellant cannot be allowed to fill in the lacunae in the case, at this stage. Consequently, the application for leading additional evidence being devoid of merits, is hereby dismissed. Even on merits, the applicant/appellant has no legs to stand.

In the instant case, the prime question to be answered is whether there ever existed any legally enforceable debt or liability of the accused towards the complainant. From the contents of the complaint in hand, it is nowhere mentioned as to when and how such a liability arose in favour of the complainant. At the most, it appears to be a case of friendly loan. However, the complainant has miserably failed to even explain the friendly relations with the accused that prompted him to advance such a huge amount of loan without reducing anything into writing. In his cross-examination, the complainant had admitted that he did not know about the family members of the accused, nor had he ever visited his residence. Even he did know the mobile phone number of the accused. Thus, the complainant has failed to prove any kind of relationship with the accused, much less a friendly relationship. On the contrary, the accused has taken a consistent stand and denied his acquaintance with the complainant.

The allegations levelled in the complaint lack specificity. The complainant has not been able to give specific details of the alleged transaction. There is no document with regard to advancement of loan. He even does not remember the month, date and time of the alleged transaction. Neither the purpose of such a loan has been disclosed. He has also admitted that he did not withdraw any money from his bank account to further hand over to the accused, neither he has been able to disclose the source of such funds. He has failed to prove by way of leading a cogent evidence, his capacity to advance such a loan.

Interestingly, the complainant has stated in his cross-examination that he has no knowledge as to whether he had received any reply to the legal notice or not, though he has himself tendered in evidence the same reply. Thus, the complainant does not even know the contents of the complaint.

It is a settled law as has been held in ***C. Antony Vs. K.G. Raghavan Nair, 2002(4) R.C.R. (Criminal) 750*** that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption of innocence; and secondly, the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

In the instant case, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record.

In view of the above discussion, this Court is of the considered opinion that the findings recorded by the trial Court are based on correct appreciation of facts and evidence on record and no illegality or perversity can be said to have been committed by it. The complainant has miserably failed to prove his case against the accused-respondent beyond a shadow of reasonable doubt.

In view of the above, the present application is dismissed and the impugned judgment rendered by the trial Court is affirmed.

Special leave declined.

25.10.2016 **(JITENDRA CHAUHAN)**
atulsethi **JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No