

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Misc. No.A-935-MA of 2015 (O&M)
Date of Decision: 17.05.2016**

Sandeep Kumar

...Applicant (s)

Versus

Smt. Meena Kumar

...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. Vijay Singh Kajla, Advocate
for the applicant.

HARI PAL VERMA J.(Oral)

CRM-19343-2015:

This is an application under Section 5 of the Limitation Act for condonation of delay of 37 days in filing the present application under Section 378(4) Cr.PC. for grant of leave to appeal against the judgment dated 12.2.2015 passed by Judicial Magistrate, Ist Class, Hisar.

For the reasons mentioned in the application which is supported by an affidavit of the applicant, delay of 37 days in filing this application under Section 378(4) Cr.PC. is condoned.

The application is disposed of.

Criminal Misc. No.A-935-MA of 2015:

The applicant-complainant has moved the application under Section 378(4) of the Code of Civil Procedure for grant of leave to appeal against judgment of acquittal dated 12.2.2015 passed by Judicial Magistrate, Ist Class, Hisar, 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 the respondent-accused has been acquitted of the charges framed against him.

Briefly stated, the applicant-complainant filed a complaint under Section 138 of the Act, against the respondent-accused with the averments that the respondent-accused along with his family is residing in the neighbourhood of the applicant-complainant. They were on visiting terms with each other. The respondent-accused and his family asked the applicant time and again that if he invests money with them, the same would be doubled within the period of ten months. They also gave references of other depositors with them. Believing it to be correct, the applicant-complainant also deposited Rs.35,37,500/- with the respondent-accused. However, when the respondent-accused did not return the money even after 10 months, the applicant approached the respondent-accused and requested her to make the payment of the amount in question. The respondent-accused kept on dilly dallying on one pretext or the other.

Therefore, the applicant made a complaint to the police, where a

panchayat was convened and the respondent-accused, in discharge of her liability towards the applicant, issued cheque No.339852 dated 3.9.2011 for an amount of Rs.35,00,000/- drawn at Punjab National Bank, Defence Colony Branch, Hisar, as part payment, from her account No.1451000100126933 in favour of the applicant-complainant. However, when the said cheque was presented for clearnace, the same was bounced and was returned with remarks "insufficient funds". Since the respondent-accused failed to make the due payment within the stipulated period, despite receipt of legal notice dated 23.9.2011, the present complaint was filed.

Considering the preliminary evidence led by the petitioner, learned Judicial Magistrate Ist Class, Hisar has summoned the respondent-accused for the offence punishable under Section 138 of the Act vide order dated 7.2.2011 and thereafter, charge was framed on 16.5.2012. Vide order dated 21.11.2013, *de novo* trial was conducted and notice under section 138 of the Act was issued to the respondent-accused, to which he pleaded not guilty and claimed trial. However, in view of judgment of this Court in the case of **Saurav Garg v. Jai Gopal CRR Nos.546, 1389 and 1390 of 2012** decided on 16.1.2013, wherein it has been held that the cases where summary trial has not been initiated, there is no need to conduct *de novo* trial, *de novo* trial was not conducted in the present case.

The applicant-complainant in order to prove his case, himself appeared in the witness box as PW-1 and tendered affidavit Ex.PW1/A and documents Ex.P1 to P4. He also examined Kamal Kumar as PW-2 who placed on record documents Ex.P5 to P7, J.C. Nafria as PW-3 who placed on record account statement Ex.P8. Thereafter, evidence of the complainant was closed by Court order dated 4.9.2014. In additional evidence, the complainant examined Sarita Rani as PW-4 who placed on record documents PW4/A to PW4/F, L.C. Saroj Rani as PW5, Bal Kishan, Ahlmad as PW-6, Harbir Malik as PW-7.

Statement of the accused under Section 313 CrPC was recorded on 15.9.2014, in which all the incriminating evidence was put to her, to which, she stated that the complaint is false and the witnesses are deposing falsely against her. The respondent-accused examined J.C. Nafria, Manager, PNB as DW-1 who placed on record document Ex.PW1/A and Ex.DW1/B, EASI Rajinder as DW-2 who placed on record document Ex.DW2/A and Raj Kumar, Record Keeper as DW-3 who placed on record document Ex.DW3/A. Additional statement of the accused under Section 313 CrPC was recorded on 15.1.2015 and accordingly, defence evidence was closed.

The trial Court after hearing the parties and appreciating the evidence on record, acquitted the respondent-accused, vide its judgment dated 12.2.2015, holding that legal enforceability of debt/liability is *sine qua non* and if it is proved

that the debt/liability was not a legally enforceable debt/liability, the accused/drawer of the cheque cannot be held liable under Section 138 of the Act. In the case in hand, debt/liability of the accused/drawer of the cheque was not legally a enforceable debt/liability. It also prevailed in the mind of the Court that the complainant, while appearing as PW-1, has not mentioned the date on which he handed over the cheque in question to the respondent-accused. Even PW-7 Harbir Malik who was examined by the complainant has deposed that no money transaction took place between the complainant and the accused. The applicant-complainant examined as many as six witnesses, but failed to prove the money transaction between the applicant-complainant and respondent-accused.

Aggrieved against the aforesaid judgment of acquittal passed by Judicial Magistrate Ist Class, Hisar, the applicant has filed the instant application for grant of leave to appeal.

Learned counsel for the applicant-complainant has argued that the trial Court has committed grave error by not considering the evidence on record, whereby it is clearly proved that the complainant had deposited the amount in question with the respondent-accused and Calendera under Sections 107/151 CrPC was also submitted against both the parties. He also stated that it is clear from the statement (Ex.P11) of SI Anoop Singh, Incharge, Police Post, Court Complex, Hisar that there was dispute with regard to transaction of money between both the

parties. He further argued that since the matter was relating to money transaction, the complainant, in discharge of his liability, issued the cheque in question in panchayat. However, the trial Court has ignored the aforesaid facts.

I have heard learned counsel for the applicant and perused the impugned judgment.

An amount of over Rs.35 lacs is involved in the instant case and therefore, it was incumbent upon the applicant-complainant to furnish elaborate details in his complaint and also lead cogent evidence in order to prove his case, but the applicant has failed to prove the source from where he has arranged the money and his plea that he possessed the money from his own sources and near and dears, cannot be accepted in the absence of examination of these persons, who would have been the relevant witnesses. He has failed to examine any such witness who may come forward and state in support of the complaint that they have given money to the applicant-complainant. Therefore, this Court has no hesitation to hold that the applicant-complainant has miserably failed to discharge the burden upon him that the respondent-accused had ever issued the cheque in question in discharge of his legally enforceable debt or liability, which is the requirement of Section 138 of the Act. Once the applicant-complainant has failed to establish his legally enforceable right, it cannot be held that acquittal of the respondent-accused is illegal in any manner.

In view of the aforesaid, no interference is warranted in the impugned judgment dated 12.2.2015 passed by learned Judicial Magistrate Ist Class, Hisar.

Accordingly, the present application is dismissed.

May 17, 2016
AK

(HARI PAL VERMA)
JUDGE