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

CRM-A-628-MA-2013
Date of decision:-10.11.2017

Surinder Bansal

...Applicant

Versus

Satpal

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Brijender Kaushik, Advocate
for the applicant.

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H.S. MADAAN, J.

Applicant – Surinder Bansal has filed this application under Section 378(4) Cr.P.C. seeking special leave to appeal.

Briefly stated, facts of the case are that complainant – Surinder Bansal had brought a criminal complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act) against accused Satpal on the allegations that at request of the accused, complainant granted a friendly loan of Rs.1,00,000/- to him on 17.11.2009 and Rs.30,000/- on 20.11.2009 against receipt dated 20.11.2009 issued by son of accused Rajiv Kumar; that it was assured that complainant would receive back the said amount in one year without any hassle; that the complainant asked the accused to return the said friendly loan at which accused in order to discharge his liability towards the complainant issued cheque bearing No.016642 dated 1.12.2010 for Rs.25,000/-, cheque No.016644 dated 1.12.2010 for

Rs.25,000/-, cheque No.016645 dated 1.12.2010 for Rs.25,000/- and cheque No.016646 dated 1.12.2010 for Rs.30,000 all drawn on Central Bank of India, Urban Estate, Ambala City; that the complainant presented those cheques to his banker i.e. State Bank of India, Model Town, Ambala City on 7.12.2010, which in turn forwarded the cheques to banker of accused namely Central Bank of India for encashment but the cheques were returned uncashed with memo of the bank dated 8.12.2010 having endorsement "Funds Insufficient"; that the complainant was informed accordingly, at which he served legal notice dated 29.12.2010 upon the accused on last known two addresses but accused refused to receive the legal notice and those were returned with the remarks "*GHAR WALON NE LENE SE INKAAR KIYA"* (family members refused to take); that the accused did not make payment within the stipulated period, as such the complainant had filed a complaint before Judicial Magistrate Ist Class, Ambala.

After recording of preliminary evidence, accused was summoned. Notice of accusation under Section 138 of the Act was served upon him, to which, he pleaded not guilty and claimed trial.

During the course of evidence, complainant Surinder Bansal got his statement recorded as CW1 submitting his affidavit Ex.CW1/A reiterating his version as contained in the complaint tendering Ex.C1, Ex.C3, Ex.C5 and Ex.C6 cheques in question, Ex.C2, Ex.C4, Ex.C7 and Ex.C8 memos of bank, bank payment receipt Ex.C9, bank statement Ex.C10, Ex.C11 legal notice, Ex.C12 and Ex.C13 postal receipts, Ex.C14 and Ex.C16 registered envelopes, Ex.C15 postal acknowledgement card, Ex.C17 statement of account and copy of cheque No.938708 for Rs.1,00,000/- drawn on Allahabad Bank as Ex.C18.

With that the evidence of complainant was closed.

Statement of accused was recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against him submitted that he was innocent and had been falsely involved in the case. He denied having taken any money from the complainant or being liable to pay any amount to him, rather he took up a stand that he and his son gave ten security cheques each to the complainant on the assurance for getting the Agency of tea leaves with the complainant and complainant has played fraud upon him by misusing the security cheques.

During his defence evidence, the accused examined Devinder Kumar as DW1, who tendered his affidavit Ex.DW1/A corroborating the version of accused. Accused further examined Ms.Arvinderjeet Kaur, Criminal Ahlmad of the Court of JMIC, Ambala as DW2, who had brought the file titled as "Surinder Bansal Versus Amit Vashishat" regarding cheque amount of Rs.1,40,000/-, in the said case proving cheque of Rs.85,000/-. She had also brought the file of case titled "Surinder Bansal Versus Gagandeep Rawat", proving cheque amount of Rs.60,000/-, wherein the alleged amount had to be given on 15.5.2011, 29.4.2013 and 16.4.2013. Harsh Kumar appeared as DW3, who tendered his affidavit Ex.DW3/A, in which he lend support to the case of accused.

Accused further tendered in evidence documents Ex.D1 to Ex.D8.

Thereafter, the defence evidence of accused stood closed.

After hearing arguments, the learned trial Magistrate dismissed the complaint under Section 138 of the Act. The main reasons given for arriving at such conclusion are as follows:

(1) To prove legal enforceable pecuniary liability of the accused towards him, the complainant had relied upon Ex.C10 allegedly an acknowledgement of loan given by son of accused Satpal namely Harsh Kumar and another son of accused namely Rajiv Kumar having acknowledged the receipt of the friendly loan. The trial Magistrate had observed that though DW3 Harsh Kumar had admitted his signatures on Ex.C10 stating it to be statement of account of his father but he had no where admitted that it is the acknowledgement of the alleged cheque amount and further according to the trial Magistrate the ink and writing of the amount as well as signatures of Rajiv Kumar were different from that Harsh Kumar and in Ex.C10, no where expressly or impliedly, it is mentioned that sons of accused had received the cheque amount, therefore Ex.C10 could not be treated as valid admission or acknowledgement of the cheque amount as alleged transaction in the present case is surrounded by suspicious circumstances for the following reasons:

(i) The complainant had submitted that he had given a friendly loan to the accused but evidence on record shows that it was not so and complainant is a money lender advancing loans to different persons on different occasions. It being so , he was expected to maintain the proper account books/ledger etc., which he had not done.

(ii) The loan had not been given in presence of any witness.

(iii) The loan transaction is neither supported by any documentary evidence nor by any oral testimony.

(iv) Failure of the complainant to show that he had capacity to lend such huge amount to accused. The complainant in his cross-examination stating that he had received loan of Rs.1 lac from Ashok Kumar vide Ex.C17 and Ex.C18 though Ex.D2 reveals that complainant had shown his ignorance regarding taking of loan from Ashok Kumar. It seems highly unusual and strange that complainant borrowed money from Ashok Kumar and lent the same to the accused without interest. Reference was made to Hon'ble Apex Court judgment titled ***K. Prakashan Versus P.K. Surendern 2007(4) RCR(Crl.) 588*** which was a case when it was observed that complainant himself had not sufficient funds and used to borrow the same from others. The complaint was dismissed.

(2) Material inconsistency in the statement of complainant inasmuch he had alleged different facts on different occasions

in his deposition vide Ex.D1 and Ex.D7.

(3) Failure of the complainant to show the alleged loan amount in his income tax returns more particularly when he himself has claimed that it was a loan which was paid after one year i.e. in the next financial year.

(4) The amounts on cheques having been written in different ink and by different pen pointing out that there was possibility of misuse of blank cheques. The alleged loan transaction and execution of the cheques in question are surrounded by suspicious circumstances. Benefit of doubt going to the accused.

(5) Presumption under Section 139 of the Act being rebuttable.

(6) The defence version being probable.

(7) The trial Magistrate had come to the conclusion that complainant had failed to prove that cheques in question had been issued by the accused in discharge of his legal enforceable debt/liability, therefore, benefit of doubt to the accused and he was acquitted.

The complainant felt aggrieved and he had knocked at the door of this Court by moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the judgment of acquittal.

I have heard learned counsel for the applicant and I find that no ground is there to grant special leave to appeal. I do not find any illegality and irregularity in the judgment passed by the learned trial Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Therefore, no ground is made out to grant special leave to appeal in this case. The application is, therefore dismissed accordingly.

(H.S.MADAAN)
JUDGE

10.11.2017
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No