

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

CRM-A-1011-MA-2017

Date of decision:22.11.2017

L.S. Thakur

.....Applicant

Versus

M/s Apex Steel & Tubes and another

.....Respondents

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN
HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU**

Present: Mr. Shiv Kumar, Advocate
for the applicant.

MAHABIR SINGH SINDHU, J.

L.S. Thakur-applicant/complainant has filed the present application for seeking leave to appeal against the impugned judgment dated 16.2.2017 passed by learned Judicial Magistrate Ist Class, Faridabad vide which respondent No.2 has been acquitted of the charges punishable under Sections 467, 468 and 471 of the Indian Penal Code (“IPC”-for short).

Applicant-complainant filed a complaint against the respondents on the allegations that a cheque bearing No.343468 dated 12.2.2011 for an amount of ₹6 lakhs drawn on the State Bank of Bikaner & Jaipur was stolen by the respondents from his office and the same forged and fabricated and he has not even signed the said cheque.

After recording of the preliminary evidence, respondent No.2 was summoned to face trial for offence punishable under Sections 467, 468 and 471 IPC and thereafter pre-charge evidence was recorded. On the basis thereof, charges under Sections 467, 468 and 471 IPC were framed against the respondent No.2. Thereafter, complainant-applicant did not lead any evidence and a statement was made on his behalf that evidence led in pre-charge be read as “after-charge” evidence also and, thus, his evidence was closed. Similarly, on behalf of respondents also, statement was suffered and no further cross-examination of the pre-charge evidence was recorded. Thereafter learned trial Court put all the incriminating circumstances appearing against the respondent No.2 under Section 313 Cr.P.C., but he denied the same and claimed his false implication.

In defence, respondent No.2-Sachin Gupta appeared himself as DW-1 and also produced documentary evidence to support his case.

After hearing both the parties and taking into consideration the material available on record, learned trial Court acquitted the respondent No.2 of the charges framed against him vide the impugned judgment, hence the present application for seeking leave to appeal.

It is contended on behalf of the applicant that neither the cheque in question for an amount of ₹6 Lakhs was issued by applicant/complainant, nor he has signed the same, rather the cheque has been stolen by respondent No.2 from his office in order to extract money from him in a criminal complaint under Section 138 of the Negotiable

Instruments Act, 1881 (“the Act, 1881”-for short). Further urged that there is neither any legal liability, nor dues and as such, there was no occasion for him to issue cheque in question in favour of respondent No.2.

There is no dispute that a complaint under Sections 138/142 of the Act, 1881 had already been filed against the applicant/complainant by respondent No.2 and he was convicted and sentenced to undergo rigorous imprisonment for a period of six months alongwith compensation for an amount of ₹9 lakhs by learned Judicial Magistrate Ist Class, Faridabad vide judgement and order dated 20.11.2014 Ex.DW1/12. It has also come on record that complainant-applicant had a business dealing with the respondents. It is also necessary to mention here that in the complaint under Section 138/142 of the Act, 1881, the applicant admitted that he had issued the post-dated cheque to the respondents and thus there is no question of stealing them. Documents brought on record (Ex.DW1/1 to Ex.DW1/11) clearly prove that there was business dealing between the applicant and the respondents. During cross-examination, in the complaint case under Sections 138/142 of the Act, 1881, it has been admitted by the applicant himself that no cheque has been stolen from the cheque-book, thus learned trial Court has rightly come to the conclusion that present complaint has been filed as a pressure tactic upon the respondents and a counter-blast to the complaint filed against him under Section 138/142 of the Act, 1881. The applicant/complainant has failed to show any material on record that

judgment of conviction and order of sentence dated 20.11.2014 passed in criminal complaint filed under Sections 138/142 of the Act of 1881 has been set aside by any Court of competent jurisdiction and all the contentions raised by the present applicant had also been dealt in the judgment and order dated 20.11.2014

In view of the above, the learned Judicial Magistrate Ist Class has rightly acquitted the respondent No.2 of the charges punishable under Sections 467, 468 and 471 IPC by giving him the benefit of doubt and thus this Court does not find any material to differ with the view taken by learned trial Court and grant leave to appeal against the impugned judgment. Consequently, the application is dismissed and leave to appeal is declined.

(T.P.S.MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

22.11.2017

Gaurav Sorot

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| 1. | Whether reportable? | No |
| 2. | Whether reasoned / speaking? | Yes |