

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

CRM-A-2405-MA of 2016.

Decided on:-20.09.2017.

Surinder Kaur.

.....Applicant.

Versus

Kulwant Singh Dhillon.

.....Respondent.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Gaurav Chopra, Advocate
 for the applicant.

HARI PAL VERMA, J.

The applicant has filed the present application under Section 378(4) of the Code of Criminal Procedure for grant of leave to appeal, against the judgment dated 07.10.2016 passed by learned Judicial Magistrate 1st Class, Chandigarh, whereby the respondent was acquitted of the charge framed against him in a criminal complaint filed against him under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act).

Briefly stated, it is the case of the applicant-complainant that the respondent-accused in discharge of his legal and financial liability had issued a cheque bearing No.608692 dated 19.03.2014 amounting to Rs.20 lakhs drawn on Centurion bank of Punjab Limited, Chandigarh in favour of the applicant. The said cheque when presented by the applicant for encashment

with her banker, was dishonoured with the remarks “insufficient funds/refer to drawer” vide memo dated 22.03.2014. Thereafter, the applicant served a legal notice to the respondent on 20.04.2014 requesting him to make the payment of the cheque in dispute, but the respondent failed to do so. Hence, the complaint.

After recording the preliminary evidence, the respondent was summoned to face trial vide order dated 03.06.2014. Finding a prima facie case, the respondent was served with the notice of accusation under Section 138 of the Act vide order dated 11.05.2015 passed by the trial Court, to which the respondent did not plead guilty and claimed trial.

After considering the evidence produced on record and hearing arguments of both the sides, learned trial Court vide judgment dated 07.10.2016 acquitted the respondent of the charge framed against him.

Aggrieved against the aforesaid judgment, the applicant-complainant has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal.

Learned counsel for the applicant-complainant has argued that the trial Court while acquitting the respondent has failed to appreciate the oral as well as documentary evidence produced by the applicant. The findings returned by learned trial Court are erroneous, based upon surmises and conjectures and are unsustainable in the eyes of law. When the respondent has duly admitted that he has issued the signed cheque to the applicant, the presumption of law operates in favour of the applicant that the said cheque

was issued by the respondent in discharge of a debt and legally recoverable liability. Therefore, the said cheque having been dishonoured, conviction of the respondent was warranted in the facts of the instant case. He has prayed for setting aside of the impugned judgment of acquittal and for conviction and sentence of the respondent under Section 138 of the Act.

I have heard learned counsel for the applicant-complainant.

As per the complainant, cheque in question was issued by the respondent-accused in discharge of a legally enforceable debt and the same was dishonoured when it was presented in the bank. Therefore, presumption under Section 139 of the Act is in favour of the applicant.

The applicant has pleaded that the respondent-accused had taken a friendly loan of Rs.20 lakhs from him, but had failed to return the same. Therefore, in order to discharge his liability, the cheque in question was issued by the respondent. Interestingly, once execution of a cheque is proved/admitted, the presumption under Section 118(a) and 139 of the Act would arise that it is supported by consideration and such presumption is rebuttable in nature and the accused can prove non-existence of consideration by raising a probable defence.

In the case in hand, the applicant has not mentioned in his complaint as to for what purpose, he had advanced such a substantial amount as loan to the respondent. No such evidence has come on record during trial. The applicant, while appearing in the witness box as CW1 has deposed that the loan was advanced to the respondent in the presence of her father-in-law

Sardar Prithvi Singh. But she has not examined this witness in support of her claim. No other witness has been examined by her regarding the loan transaction. The applicant has also not produced on record any receipt or pronote for grant of loan to the respondent-accused. Therefore, the act and conduct of the applicant is highly improbable, as no sane person is expected to advance such a substantial amount as loan to any other person without any documentation or even receipt or acknowledgement.

Interestingly, the applicant has also failed to mention the date, month and year of advancement of loan or issuance of cheque in question by the respondent in her favour either in her pleadings or in her evidence. The applicant has also not produced any document which may show her income/expenditure/ account of business income or the income tax return, which may draw an inference that she is financially well placed. She has not given any detail as to what business or profession she is carrying. The only contention, which the applicant has raised is that she has advanced a loan of Rs.20 lakhs to the respondent as she had sold an industrial shed bearing No.177 situated at Panchkula. But neither such sale deed nor any other relevant document has been produced on record by the applicant, which can substantiate the plea that the amount of Rs.20 lakhs was collected by her after the sale of the said industrial unit situated in Panchkula.

Further, the applicant-complainant has failed to show any misreading of evidence by learned trial Court and has not been able to point out any legal error in the judgment under challenge which may warrant interference by this Court. When no evidence to connect the respondent-

accused with the alleged offence is available on record, no case is made out for interference in the impugned judgment of acquittal dated 07.10.2016 passed by learned Judicial Magistrate 1st Class, Chandigarh.

Accordingly, the present application, being devoid of any merit, is dismissed. Leave to appeal is declined.

September 20, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No