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

CRM-A-1383-MA-2014 (O&M)
Date of decision : 25.07.2017

Sandeep Jain

...... Applicant

Versus

State of Haryana and others

...... Respondents

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

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Present : Mr. Himanshu Puri, Advocate
for the applicant.

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<u>H.S. MADAAN, J.</u>

This application has been filed under Section 378(4) Cr.P.C. read with Section 372 Cr.P.C. for grant of leave to appeal against order of acquittal passed by Judicial Magistrate Ist Class, Gurgaon by applicant – Sandeep Jain.

Briefly stated facts of the case are that applicant-Sandeep Jain had filed a complaint under Section 138 read with Section 142 of Negotiable Instruments Act, 1881 against the accused M/s Gold Palace, 5L/43, NIT Faridabad through its proprietor Rakesh Khatri and Rakesh Khatri proprietor of the said concern on the allegations that the complainant along with his wife Mrs. Vanita Jain has been running a jewellery shop under the name and style of M/s Anagh Jewellers Private Limited; that Rakesh Khatri proprietor of M/s Gold Palace, Faridabad was having business dealings with the complainant and his wife having friendly relations with them. On 12.10.2010 Rakesh Khatri come to their shop and purchased some ornaments on debit basis. He further represented that he was facing financial crises and requested for grant of friendly loan. The complainant and his wife accordingly agreed to grant friendly loan to the tune of ₹63 lacs to Rakesh Khatri, which included cost of jewellery items so purchased by the accused. Such accused had given assurance to the complainant and his wife that he would return the entire amount within a period of six months. As per case of complainant out of aforesaid loan amount, an amount of ₹24 lacs had been given to the accused by Mr. Mohit Jain, a friend of the complainant. When the accused did not return the loan amount within stipulated period, the complainant approached him asking him to return the amount and to make payment of ornaments so purchased by him. That for discharge of his financial liability the accused had issued cheques, details of which are as follows:-

Sr. No.	**Cheque No.**	**Dated**	**Amount (₹)**	**Drawn on**	**In favour of**
1.	605503	23.08.2011	1,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	Sandeep Jain
2.	605504	23.08.2011	1,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	Sandeep Jain
3.	605505	23.08.2011	1,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	Sandeep Jain

4.	605506	23.08.2011	1,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	Sandeep Jain
5.	605507	23.08.2011	1,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	Sandeep Jain
6.	605508	23.08.2011	1,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	Sandeep Jain
7.	605510	23.08.2011	1,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	Sandeep Jain
8.	605511	23.08.2011	1,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	Sandeep Jain
9.	605512	23.08.2011	1,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	Sandeep Jain
10.	605531	23.08.2011	24,90,334/-	PNB, DAV Centenary College, NIT, Faridabad	Vanita Jain
11.	605501	11.07.2011	1,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	M/s Anag Jewellery Pvt. Ltd.
12.	605502	11.07.2011	1,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	M/s Anag Jewellery Pvt. Ltd.
13.	604098	23.08.2011	1,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	M/s Anag Jewellery Pvt. Ltd.
14.	604099	23.08.2011	1,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	M/s Anag Jewellery Pvt. Ltd.
15.	605526	23.08.2011	23,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	Mohit Jain
16.	604100	23.08.2011	1,00,000/-	PNB, DAV Centenary College, NIT, Faridabad	Sandeep Jain

The complainant presented cheque bearing No.604100 dated 23.08.2011 for the sum of ₹1 lac through his banker IDBI Bank Limited, Gurgaon but the cheque was received back uncashed vide memo dated 25.08.2011 with the remarks "**Funds Insufficient**". The complainant served legal notice dated 13.09.2011 upon the accused informing him regarding dishonoring of cheque and asking him to repay the cheque amount within stipulated period from date of receipt of legal notice. However, accused failed to pay the amount within stipulated time despite service of legal notice. Hence the complainant filed the complaint in question.

After recording preliminary evidence accused was summoned. Notice of accusation was served upon him to which he pleaded not guilty and claimed trial.

During the course of evidence of complainant, he got his own statement recorded as CW-1 by tendering his affidavit Ex.CW1/A on oath, in which all the assertions as made by him in the complaint had been reiterated by proving various statements.

Statement of accused was recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against him and submitted that he was innocent and had been falsely involved in the case. He denied his liability to pay any amount to the complainant. However, he did not lead any evidence in defence despite availing opportunities.

After hearing arguments the trial Court dismissed all the complaints believing the defence version that cheques in question had been given by accused to complainant as security and not on account of discharge of any financial liability like return of the loan amount or to pay prices of the ornaments.

As matter of fact accused had denied having raised any friendly loan from the complainant or purchasing of any jewellery items from his concern. The main grounds upon which the complaint was dismissed were as follows:-

i. Complainant had not submitted any document showing his connection with M/s Anagh Jewellers Pvt. Ltd.

ii. He had not filed any authority letter showing that he was authorized by said concern to file the complaint.

iii. No document to prove previous transaction of business dealing between the parties had been brought on record by the complainant. Though in the complaint as per case of complainant there were business dealings between the parties and accused was acquainted with him.

iv. No bill, invoice or any other document was placed on file to show that any loan had been given by M/s Anagh Jewellers Pvt. Ltd. to accused.

v. No balance-sheet or books of account of company showing the transaction as alleged in the complaint had been proved in evidence;

vi. No income tax record evidencing the alleged transaction was got produced by the complainant in support of their case.

vii. Complainant had admitted in cross-examination that he did not give any personal loan to accused, later his wife and Mohit Jain had given loan on different dates, but he did not disclose the dates on which accused handed over cheques to him.

viii. Contrary replies given by the complainant, since at one place he stated that total liability of accused happened to be ₹63 lacs including some personal loans, whereas at other place stating that they never gave any cash loan to accused, rather supplied goods of ₹63 lacs without being able to tell dates of supply of goods.

ix. Dates of cheques of 14 cheques for the sum of ₹1 lac each being same i.e. 23.08.2011, which is improbable since issuance of 14 cheques was not required for making payment of ₹14 lacs and one cheque would have been sufficient.

x. Four cheques out of fourteen cheques so issued being in favour of M/s Anagh Jewellery Pvt. Ltd., however, existence of that company on 23.08.2011 itself being doubtful; since complainant in his testimony had stated that company was dissolved four years back. His statement having been recorded on 06.02.2014 meaning thereby that company was dissolved in the year 2011 is making existence of that company in the year 2011 to be improbable.

xi. The defence version that complainant had used blank cheques signed by the accused given as security to file the *complaint coming out to be convincing.*

xii. Presumption under Section 139 of the NI Act in favour of complainant getting rebutted by a probable defence raised by the accused.

It may be mentioned here that in terms of Section 378(5) Cr.P.C. no application under sub- section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

In the present case this application has been filed much beyond the limitation period of 60 days as is applicable in the present case and there is delay of 75 days in filing the appeal. Although an application under Section 5 of the Limitation Act has been submitted for condonation of delay contending that the applicant is a poor person and he was under the impression that he could file the appeal within 90 days and later on he came to know that appeal can be filed within 60 days. These contentions seem to be wrong on the face of application.

As per case set up by the complainant in the complaint, he is a Jeweller running a Jewellery shop at Faridabad and he had granted a loan of ₹63 lacs to the accused. Such person can certainly be not termed as a poor person. Furthermore ignorance of law is not an excuse, no cogent convincing reason could be explained for condonation of delay. Section 3 of the Limitation Act provides bar of limitation, it dilates that every petition filed after a period of limitation shall be dismissed, although an objection in that regard might not have been taken. Thus the application under reference is liable to be dismissed for the sole reason of the same being time barred.

In terms of Section 378(5) of Cr.P.C. on merits also, I find that the application is not sustainable. The application has no legs to stand for the reason that the judgment passed by learned Judicial Magistrate Ist Class, Gurgaon is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. It does not suffer from any illegality or infirmity much less being perverse. Thus the application is without any merit and is bound to fail. The same is dismissed accordingly.

(H.S. MADAAN)
JUDGE

25.07.2017
Gaurav Sorot

1. Whether reportable? **No**

2. Whether speaking / reasoned? **Yes**