

IN THE HIGH COURT OF PUNJAB & HARYANAAT CHANDIGARH

CRM-A No. 1514-MA of 2014 (O&M)

Date of decision : 3.11.2017

...

Jagbir Singh

.....Applicant

vs.

Sandeep Sharma

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Jagbir Singh, Advocate for the applicant

Mr. Jatinder Dhanda, Advocate for the respondent.

...

H. S. Madaan, J.

Complainant Jagbir Singh had brought a complaint under Section 138 of the Negotiable Instruments Act against accused Sandeep Sharma, on the allegations that accused was running a business in the name and style of M/s Dhani Enterprises; that he was in the need of money for the said business, as such he obtained a sum of Rs.1,50,000/- from the complainant. The complaint had given the amount of Rs. 1 lac by way of cheque and Rs.50,000/- in cash. The accused had assured to return the said amount to the complainant and when the amount was demanded by the complainant, who is a proprietor of Power Electronics, the accused in discharge of his outstanding liability issued a cheque bearing No. 105002 dated 1.12.2011 for a sum of Rs. 1,50,000/- drawn on Axis Bank Ltd., Hisar, in favour of the complainant. However, on presentation, the cheque got dishonoured due to insufficiency of funds in the account

of accused. On being informed, the complainant served a statutory notice dated 01.12.2011 upon the accused calling upon him to make payment of cheque amount within 15 days of receipt of notice, but to no effect, as such he brought the complaint in the Court of JMJC, Hisar.

After recording the preliminary evidence, accused was ordered to be summoned. He put in appearance. Notice of accusation for offence under Section 138 of the Negotiable Instruments Act, was served upon him, to which he pleaded not guilty and claimed trial.

During his evidence, the complainant had led oral as well as documentary evidence. Thereafter statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him, but he denied the same pleading false implication. He did not lead any evidence in defence.

After hearing arguments, the trial Magistrate, acquitted the accused of the charge framed against him, vide impugned judgment dated 1.8.2014. The reasons given in the judgment happen to be as follows:-

- i) The complainant has not place on record any document that M/s Dhani Enterprises belongs to accused Suresh Sharma.
- ii) The cheque in question is an account payee to M/s Power Electronics and the complainant has not placed on record any document to establish this fact that the complainant is a proprietor of M/s Power Electronics.
- iii) The statement of account Exhibit P-5 not bearing name of

the complainant.

- iv) The complainant is neither payee nor holder in due course and complainant having not placed any document on file to establish that he is a proprietor of M/s Power Electronics.
- v) The complainant appearing as PW-1 admitting in his cross examination that he had not mentioned the fact about giving Rs.50,000/- in presence of Ramphal in the complaint.
- vi) Failure of the complainant to mention the date, place and month when Rs.50,000/- had allegedly been given to accused.
- vii) As per entry of statement of account Exhibit P-5 on 3.11.2011, Rs.1 lac was transferred to M/s Dhani Enterprises from M/s Power Electronics and there being nothing to show that M/s Dhani Enterprises belongs to the accused and M/s Power Electronics belongs to the complainant.
- viii) Failure of complainant to establish that he had advanced a sum of Rs.1,50,000/- to the accused and that cheque in question was issued in discharge of legally enforceable debt/liability.
- ix) Failure of the complainant to bring evidence on record to show from where he had arranged such a huge amount of Rs.1,50,000/- in order to advance loan to the accused.
- x) Issuance of cheque by the accused does not ipso facto prove that there is debt or liability of the accused towards the

complainant. The trial Court had referred to case law in that regard.

xi) Failure of the complainant to prove his case.

Feeling aggrieved by the said decision, the complainant has approached this Court moving an application under Section 378 (4) Cr.P.C. seeking leave to appeal.

Notice of the application was given to the respondent, who had initially put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record and authority referred to by learned counsel for the complainant-applicant - *Anil Hada vs. Indian Acrylic Ltd. 2000 (1) Crimes 26* and I am of the view that no ground is there to grant leave to appeal to the complainant-applicant. The impugned judgment is well reasoned one, based on proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The judgment cited by the learned counsel for the complainant-applicant does not help him in any way, due to different facts and circumstances, in which such observations were made. Further more, the complaint had been dismissed for various other reasons and not for the solitary reason, of non-prosecution of the company.

Under these circumstances, the application seeking permission for leave to appeal does not have any merit and is dismissed accordingly.

(**H.S. Madaan**)
Judge

3.11.2017

chugh	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No