

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1624-MA of 2014 (O&M)

Date of decision : 18.7.2017

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M/s Assa Singh Engg. Works and another

.....Appellants

vs.

State of Punjab and others

.....Respondents

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

Present: Mr. D.P.S. Randhawa, Advocate for the appellants

Mr. Gaurav Bansal, Assistant Advocate General,
Haryana.

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H. S. Madaan, J.

Applicant – M/s Assa Singh Engg. Works through its partner Satnam Singh, has filed this application under Section 378(4) Cr.P.,C. seeking permission for leave to appeal against respondents State of Punjab and another challenging the impugned judgment dated 12.3.2014 passed by Judicial Magistrate Ist Class, Batala, vide which complaint filed by the complainant was dismissed and the accused was acquitted of the charge framed against him.

Briefly stated that facts of the case are that M/s Assa Singh Engg. Works, near Namdhari Gurudwara, Kahnuwan Road, Batala, through its partner Satnam Singh and Satnam Singh, as partner of said concern, has brought a complaint under Section 138 of the Negotiable Instruments Act, against Mahajan Machine Tools Corporation, Ludhiana, through its partner Om Parkash, as well as, Om Parkash and Narinder Kumar, partners of the said concern, on the allegation that accused had purchased machinery vide bill No. 27 dated 7.11.2008, amounting to Rs. 4,57,600/- and had issued cheque No. 222498 dated 6.11.2008 for Rs.3,00,000/- drawn on Centurion Bank of Punjab Limited, Ludhiana, for discharge of part of liability. However, when the complainant presented the cheque for payment to the said bank through Punjab National Bank, Simble Chowk, Batala, the cheque was received back un-cashed with the remarks 'payment stopped by drawer'. The complainant had issued legal notice to the accused calling upon them to make payment within 15 days of notice, but to no effect. Hence the complainant filed the complaint in question.

After recording the preliminary evidence, accused were ordered to be summoned. The accused put in appearance. Notice of accusation under Section 138 of the Negotiable Instruments Act was served upon the accused Narinder Kumar, to which the accused pleaded not guilty and case was fixed for evidence of complainant. Since accused Om Parkash had expired, proceedings against him stood abated.

During the evidence of complainant Satnam Singh himself

appeared as CW-1 and repeated on oath case of complainant as given in the complaint proving various documents, i.e. cheque bearing No. 222498 dated 6.11.2008 as Exhibit C-1, memo of the bank as Exhibit C-2, notice dated 20.11.2008 as Exhibit C-3, postal receipts dated 20.11.2008 as Exhibits C-4 to C-6, certificate of UPC as Exhibits C-7 to C-9.

Statement of accused Narinder Kumar under Section 313 Cr.P.C. was recorded in which all the incriminating circumstances appearing against the accused, were put to him, but he denied the allegations pleading innocence. The accused did not lead any evidence in defence.

After hearing arguments, the trial Court dismissed the complaint vide judgment dated 12.3.2014. Resultantly, the accused was acquitted of the charge framed against him. Such judgment left the complainant aggrieved and they have approached this Court by way of filing an application under Section 378(4) Cr.P.C. for leave to appeal against the said judgment. Since the application was filed belatedly after a delay of 155 days, an application under Section 5 of the Limitation Act, for condonation of such delay has been filed.

I have heard learned counsel for the parties, besides going through the record and I find that there is no merit in the application/appeal.

Section 378 Cr.P.C. deals with appeal in case of acquittal. Sub Section 4 provides that if an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to

appeal from the order of acquittal, the complainant may present such an appeal to the High Court. Sub Section 5 provides that 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. Sub Section 6 provides that if in any case, the application under sub- section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub- section (1) or under sub- section (2).

Here in the instant case, the application for leave to appeal has been filed much beyond the period of limitation and delay in approaching this Court is to the tune of 155 days. The reason given is that the complainant had earlier approached Sessions Judge, Gurdaspur on 17.4.2014, but since as per judgment rendered by Full Bench of this Court, the appeal lies before this Court, therefore appeal before Sessions Judge was withdrawn on 28.8.2014, with liberty to file an appeal before this Court, as such the delay for filing the appeal is unintentional and bona fide.

However, I find that no ground for condonation of delay is made out. The law is well settled that ignorance of law is no excuse. The applicant should have been diligent enough to know that application for leave to appeal was to be filed before this Court, but it was not so done, rather complainants sought their remedy before the

wrong forum, which they cannot justify. Section 3 of the Limitation Act, 1963 deals with bar of limitation. It provides that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Therefore, the application being time barred deserved dismissal for that very reason.

However, on merits also the appeal lacks merit. The trial Court vide well reasoned judgment by proper appraisal of the facts, correct appreciation of evidence and interpretation of law, has come to the conclusion that the entire amount payable to the complainant had been paid by the accused and nothing remains due and this fact has been admitted by the complainant during his cross examination, that he had received entire amount from the accused and after receiving the entire amount, he delivered the machines to the accused and there is no balance outstanding against the accused. It being so, no cause of action survives to the complainants to proceed with the complaint. Offence under Section 138 of the Negotiable Instruments Act, can be taken to have been committed if the cheque which is issued in favour of the drawee on account of discharge of financial liability, gets bounced on account of insufficient funds in account of drawer and the cheque should have been issued for discharge of financial liability and not when it is given as security or otherwise. Such admission of complainant cuts at the basis of its case that cheque issued by the accused was towards payment for the machinery purchased by the accused from the complainant.

Thus on merits also, no interference in the order of acquittal

is called for. Therefore, the application for leave to appeal is found to be without and merit and is dismissed accordingly.

(H.S. Madaan)
Judge

18.7.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No