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

CRM-A-1726-MA-2014 (O&M)
Date of decision : 25.07.2017

Mohit 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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H.S. MADAAN, J.

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 – Mohit Jain.

Briefly stated facts of the case are that applicant-Mohit 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 accused-Rakesh Khatri was having business dealings with his friend namely Sandeep Jain, Proprietor of M/s Anagh Jewellers Pvt. Ltd.; that on 12.10.2011 accused-Rakesh Khatri along with Sandeep Jain came to the complainant and took a friendly loan of ₹23,00,000/- from him for a period of six month; that when the accused did not return the loan amount within stipulated period, the complainant along with his friend Sandeep Jain approached the accused and demanded the loan amount; that accused initially showed his inability to pay the aforesaid loan amount and avoided the matter on one pretext or the other; that at last accused issued cheque No.605526 dated 24.08.2011 for ₹23,00,000/- in discharge of his financial liability.

The complainant presented cheque bearing No. 605526 dated 24.08.2011 for the sum of ₹23 lac through his banker IDBI Bank Limited, Gurgaon but the cheque was received back uncashed vide memo dated 30.08.2011 with the remarks "**Funds Insufficient**". The complainant served legal notice dated 19.09.2011 upon the accused informing him regarding dishonouring of cheque and asking him to pay 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 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 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 the complaint believing the defence version that cheque 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.

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

i. Complainant being the solitary witness who got his statement recorded in support of his case, in his cross-examination he had stated that he does not know the accused and he had never entered into any transaction with the accused.

ii. That he had given goods in the form of gold sets and diamond jewellery of his wife which she had brought in dowry worth ₹23 lacs to the accused, which being contrary to the stands taken in the complaint regarding he having advanced friendly loan to the accused giving a serious jolt to his case.

iii. No document in the shape of bills invoice having been proved in evidence by complainant and that person giving his *wife's dowry articles as a loan to some one being highly improbable.*

iv. The complainant submitting that accused had come to him on 12.10.2011 and had taken taken friendly loan for a period of 6 months, but subsequently accused did not return the money and ultimately issued cheque in question which is dated 24.08.2011 i.e. approximately two months before the date of alleged demand.

v. The complainant has stated in cross-examination that he had given goods on 24.08.2011 which is date of his cheque thereby rendering his case doubtful. Certified copy of statement of Sandeep Jain-complainant in connected case having been produced in defence having reference to loan advanced by the complainant being Ex.DA, in which, it is mentioned that Sandeep Jain had handed over cheque to Mohit Jain after filling it in his own hand writing thereby pointing out that Sandeep Jain was in possession of blank signed cheques of accused which he (complainant-Mohit Jain) got filled by Sandeep Jain and then filed the present complaint.

vi. 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 122 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 had granted a loan of ₹23 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**