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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-252-MA-2017 (O&M)
Date of decision : 22.09.2017

Poonam Walia

... Applicant(s)

Versus

Vikram Bhardwaj

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Manjot Kaur, Advocate
for the applicant.

AMIT RAWAL, J.

1. The applicant-complainant, being aggrieved of the judgment dated 15.12.2016 passed by the trial Court, has preferred an application under Section 378 (4) of the Criminal Procedure Code, for permission to leave to appeal. The said application is accompanied by an application bearing CRM No.4642 of 2017, under Section 391 Cr.P.C., seeking placing on record the affidavit (Annexure A-1) as an additional evidence.

2. The factual matter of the dispute arising out of filing of the compliant is that the accused-respondent had purchased a constructed house from the complainant on 04.03.2014 against the total sale consideration of ₹ 7,00,000/-. The accused had paid a sum of ₹ 3,50,000/- in cash and issued a cheque, in question, bearing No.121522 dated 14.11.2015 amounting to ₹ 2,00,000/- in favour of the applicant-complainant drawn at Canara Bank. The cheque on presentation has been dishonored and the accused vide legal notice dated 19.11.2015 was called upon to make the payment within a period of 15 days from the date of the receipt of the legal

notice. Having failed to do so, the applicant-complainant was compelled to file the complaint.

3. Learned counsel for the applicant-complainant submitted that the accused, had also executed an affidavit dated 04.03.2014, which is sought to be placed on record by way of an additional evidence, acknowledging that the accused had issued two cheques bearing No.121521 and 121522 amounting to ₹ 1,50,000/- and ₹ 2,00,000/-, respectively. The affidavit was inadvertently not confronted to the accused and therefore, the same is being placed on record to substantiate the case set out in the complaint. The aforementioned evidence is essential and necessary for the adjudication of the *lis*. The accused failed to lead any evidence except his statement under Section 313 Cr.P.C. The purchase of the property is an admitted fact, which had not been denied, therefore, the cheque was issued for discharge of the legal liability, thus, the Court below has committed illegality and perversity in not appreciating the aforementioned piece of evidence, thus, the judgment, under challenge, is liable to be set aside.

4. I have heard the learned counsel for the applicant-complainant and appraised the paper book and of the view that there is no merit in the submissions of Ms. Manjot Kaur, for, concededly the complainant did not confront the affidavit, sought to be placed on record by way of additional evidence, acknowledging the issuance of cheques, even otherwise, the affidavit is dated 04.03.2014, whereas the cheque, in question, is dated 31.01.2015. Be that as it may, even if, the affidavit was to be confronted, it was still incumbent upon the applicant-complainant to examine the signatures of accused on the affidavit and as well as that of the Stamp Vendor. The reopening of the issue by permitting additional evidence,

tantamounts to fill up the lacuna, which is not permissible in law until and unless, it goes to the root of matter. The complainant was negligent in not leading the evidence in affirmative, thus, in my view, the application for placing on record additional evidence tantamounts to fill up the lacuna and accordingly, the application bearing CRM No.4642 of 2017 is dismissed.

5. As regards the application seeking leave to appeal, in the absence of the confrontation of the aforementioned document, the applicant-complainant has not been able to prove the fact that the cheque was issued for discharge of the legal liability. No sane person would sell the property by taking a post-dated cheque. There is no pleading or any evidence that the relations between the parties were such that they had reposed so much faith as both the accused and complainant were strangers. Such a plea, keeping in view the balance sale consideration pending by taking post dated cheque, is rumor.

6. For the foregoing reasons, I do not find any illegality and perversity in the judgment rendered by the trial Court, much less, no ground is made out for interference and accordingly, the application seeking leave to appeal is dismissed.

22.09.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**