IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.A-388-MA of 2017 (O&M)
Date of Decision: 22.08.2017

Naresh Kumar

...Applicant (s)

Versus

Kiram Bansal

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. C.L. Sharma, Advocate
for the applicant.

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HARI PAL VERMA, J.

This is an application filed under Section 378(4) CrPC seeking leave to appeal against the judgment of acquittal dated 23.01.2017 passed by Judicial Magistrate Ist Class, Phul, whereby the respondent-accused has been acquitted of the charge framed against her for the offence punishable under Section 138 Negotiable Instruments Act, 1881 (for short, "the Act").

Briefly stated, the respondent-accused is stated to have borrowed Rs.14,00,000/- from the applicant-complainant on 15.1.2015 and agreed to return the same with interest @ 18% per annum. But on account of non-payment of the amount due, some dispute arose between the parties. With the intervention of some respectables, a panchayati agreement was executed between the parties and in order to discharge her legal liability, the respondent-accused had issued cheque dated 1.11.2015 for an amount of Rs.14,00,000/- in favour of the applicant-complainant. But on presentation of the cheque, the same was returned with the remarks "insufficient funds". The applicant issued demand notice dated 19.12.2015 to the respondent-accused, but despite that, the cheque amount was not paid. Hence, the complaint under Section 138 of the Act was filed against the respondent-accused.

The trial Court after hearing both the parties and appreciating the evidence on record, held that neither any amount was due against the respondent-accused in favour of the applicant-complainant nor any legal debt or liability has been proved to be due against the accused and the accused was acquitted of the charges framed against her.

Aggrieved against the aforesaid judgment of acquittal, the applicant-complainant has filed the present application for leave to appeal.

Learned counsel for the applicant has argued that once the accused has issued the cheque, it is presumed that the holder has received the same in discharge, in whole or in part, of any debt or other liability and the drawer may rebut the presumption by proving to the contrary. The applicant is a simpleton person having dim understanding. He is not well conversant with the technicalities and can be easily confused.

I have heard learned counsel for the applicant.

The trial Court has acquitted the respondent-accused for the reason that the applicant has failed to prove his case, as projected in the complaint. It has been held that the complainant himself is an idle person, doing no business whatsoever. He does not have any property in his name.

He himself has admitted that he has not lent any loan to the respondent-accused. During cross-examination, it has been found that the instant complaint was in fact got instituted through the applicant by one Rama. The applicant was not even aware of the facts of the complaint. The relevant part of the observations made by the trial Court read as under:-

> *"13. From the entire evidence on record, it is crystallized that complainant himself is an idle person, doing no business of any kind, having no property movable or immovable and admitted to have not lent any loan to the accused. From the cross-examination of complainant, it is crystallized that present complaint has been got instituted through the complainant by one Rama, who was even present in the Court today with the complainant, whereas the complainant is not even aware about the facts and circumstances of the present complaint. The conduct of the complainant in the Court clearly shows that he is a feeble minded person, having no knowledge about the affairs of the world. As such, looking into his own act and conduct and observing his behaviour in the Court, it is highly improbable to believe his version mentioned in the complaint. It has also come on record from the cross-examination of the complainant that accused is his real sister, resident of Dabwali, whereas the complainant has also claimed to have no bank account at Rampura Phul. As such when the complainant himself having not in the capacity to pay a single penny to the accused, when the complainant is not earning a single penny and when the complainant is not even aware about the facts and circumstances of the case, it cannot be said that present complaint is genuine. In the light of the cross-examination of the complainant, the complaint is found to be vague and ambiguous, having been instituted in the name of the complainant by the person accompanied him, to settle his personal score. The Honourable Supreme Court in*

John K. Abraham v. Simon C. Abraham, (2014) 2 SCC 236 *has held at para No.9 as follows: "It has to be stated that in order to draw the presumption under Section 118 read along with Section 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had the required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant." Reliance is also placed upon* ***M/s Ganesh Flour Mills Vs. Jeewan Kumar & Anr., 2004(2) RCR (Cr.) 797 (P&H),*** *wherein the Honourable High Court has also held that where the complainant failed to show in which connection the accused issued the cheque i.e. whether the cheques were against supply of goods, loan etc., the accused was rightly acquitted. It was further held by Honourable High Court that the incumbent was upon the complainant to produce documentary or oral evidence of a debt or liability. The honourable High Court had also considered the fact that though there is a presumption under Section 118 of NI Act that every negotiable instrument had been drawn for consideration, yet it was for the complainant to give details of the transactions. In para no.9 of the judgment, the Honourable High Court has held that there is a presumption that every negotiable instrument had been drawn for consideration and that the cheque had been issued in discharge of any debt due from him, it becomes the duty of the complainant to establish the consideration and the debt due."*

In view of the fact that the applicant, who is stated to be an idle person, not doing any business or having any property whatsoever and has himself admitted that he has not lent any loan to the respondent-accused, I do not find any reason to interfere into the finding recorded by the Court below.

Accordingly, the present application for leave to appeal is dismissed.

August 22, 2017 **(HARI PAL VERMA)**
AK **JUDGE**

Whether speaking / reasoned? Yes / No

Whether reportable? Yes / No