IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

215 **CRM-A-416-MA-2015.**
Date of Decision: 10.08.2017.

Dilbagh Singh ....Applicant.

Versus

Manjit Kaur ....Respondent.

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CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mrs. Rakhi Sharma, Advocate for the applicant.

Mr. Bikramjit Aroura, Advocate for the respondent.

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<u>Ramendra Jain, J.(Oral)</u>

Through this application under Section 378(4) of the Code of Criminal Procedure, the applicant-complainant has prayed for grant of special leave to file the appeal against the judgment of acquittal dated 07.11.2014.

At the outset, it is pertinent to mention that though the application is barred by limitation on account of 53 days in filing the appeal, but no application under Section 5 of the Limitation Act for condonation of the said delay has been filed, therefore, the application, being time barred, is dismissed. Even otherwise, on merit too, this Court finds no force in the application for the reasons given below.

Briefly stated, the applicant-complainant filed a complaint under Section 138 of the Negotiable Instruments Act (for short, 'the Act') against the respondent-accused on account of return of a cheque bearing No.322804 dated 13.12.2010, duly signed by her with the remarks "insufficient funds" on its presentation by the applicant-complainant

Both the parties led evidence to their satisfaction. After hearing both the sides, learned trial Court dismissed the complaint vide impugned judgment dated 07.11.2014.

According to learned counsel for the applicant-complainant, the issuance of the aforesaid cheque by the respondent under her signatures was not denied by her, therefore, a presumption under Section 139 of the Act was required to be drawn in favour of the applicant-complainant that the cheque in question was issued by the respondent to discharge her legally enforceable liability. Moreso, non responding to the legal notice by the respondent and non payment thereof, after receipt of the same, also requires to draw an adverse inference against the respondent that she had admitted her liability to repay the loan amount mentioned in the cheque in qeustion, to the applicant-complainant. Learned trial Court has erred in not drawing presumption against the respondent-accused under Section 139 of the Act while dismissing the complaint of the applicant. In support her argument, learned counsel for the applicant-complainant placed reliance upon the judgment in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited, 2016(4) R.C.R. (Criminal) 385.***

On the other hand, learned counsel for the respondent pleaded the legality and validity of the impugned judgment.

I have given anxious consideration to the submissions made by both the sides.

The relationship of master and servant in between the parties are not disputed. The applicant-complainant in his cross-examination as CW3 has categorically admitted that he, during the relevant period, was working under the respondent on a monthly salary of ₹3500/-. The amount of the impugned cheque is a very huge amount, therefore, it was incumbent upon the applicant-complainant to prove beyond any shadow of doubt about its arrangement by him before alleged lending of the same to the respondent. The applicant-complainant has pleaded that he has arranged the aforesaid amount of ₹20 lakhs by taking ₹7 lakhs from his father being sale proceeds of some property, ₹6.5 lakhs from commission agent Sukhdev Singh, ₹3.5 lakhs were withdrawn from his bank and ₹3 lakhs were lying in his house. However, the applicant-complainant did not lead any documentary evidence in support of his above version. Even he did not examine his father or produce any sale deed or agreement to sell to prove that in fact his father had received ₹7 lakhs from the sale proceeds. The applicant-complainant even did not examine commission agent Sukhdev Singh, from whom he had, allegedly, taken ₹3.5 lakhs for giving loan to the respondent or the Manager of the bank, from where the applicant-complainant had withdrawn ₹3.5 lakhs. That apart the applicant-complainant did not lead any cogent and convincing evidence as to whether, in fact, ₹3 lakhs was lying in his house.

In absence of any such cogent and convincing evidence, the learned trial Court has rightly held that it was impossible for the applicant-complainant to lend such a huge amount. No doubt, in **Sampelly Satyanarayana Rao's** case (supra), while relying upon Rangappa v. Mohan, 2010 CriLJ 2871, the Apex Court has held *that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can rely upon the material submitted by the complainant.*

However, the mere statement of the accused may not be sufficient to rebut the said presumption". But, with due deference, the said citation does not help the applicant-complainant in any manner, inasmuch as the Hon'ble Apex Court has also categorically observed therein that "though accused need not adduce his own evidence and can rely upon the material submitted by the complainant.

In the instant case, the respondent-accused, relying upon the evidence of the applicant-complainant, has very well been able to rebut the presumption of his alleged legally enforceable liability claimed by the applicant-complainant, inasmuch as the applicant-complainant did not produce any books of account or any other proof to show that he had such a huge amount with him to lend to the respondent. No witness to the impugned transaction was produced by the applicant-complainant.

It is also pertinent to mention that according to Section 269SS of the Income Tax Act, the loan/advance more than ₹20,000/- has to be made by way of an account payee cheque only. In the instant case, according to the applicant-complainant, he had received the amount of ₹20 lakh in cash and has paid the same further to the respondent in cash, which is in complete violation of Section 269SS of the Income Tax Act entailing penalty under Section 271D equal to the amount of the alleged loan of ₹20 lakh.

I have gone through the impugned judgment and find no illegality or perversity therein. Thus, the application is dismissed, being time barred, as well as on merit, too.

10.08.2017 **(RAMENDRA JAIN)**
jitender sharma **JUDGE**

Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No