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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-674-MA-2017 (O&M)
Date of decision : 22.09.2017

M/s Om Parkash Arjun Dass

... Applicant(s)

Versus

State of Haryana and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kamal Chaudhary, Advocate
for the applicant.

AMIT RAWAL, J.

1. The applicant-complainant, being aggrieved of the judgment dated 09.02.2016 of the trial Court, has preferred an application under Section 378 (4) of the Criminal Procedure code read with Section 482 Cr.P.C., for permission to leave to appeal. The said application is accompanied by an application seeking condonation of delay of 329 days.

2. It has been averred in the application seeking condonation of delay that after the judgment rendered by the trial Court, dismissing the complaint of the complainant, the accused-respondent No.2, Baldev Singh, approached the complainant in order to make the payment by taking the plea of demonetization. When the accused flatly refused to make the payment, the applicant-complainant contacted the counsel for filing the application/appeal. Owing to aforementioned reasons, the complainant did not file the application/appeal in time and a delay of 329 days has occurred in filing the application. It is submitted that the delay is not wilful nor intentional.

3. Learned counsel for the applicant-complainant submitted that the applicant-complainant is a Firm of Commission Agent and the accused was dealing with the Firm before leaving 4-5 years back after settling the account and nothing remained outstanding against the accused. However, on 30.03.2009, the accused approached the complainant to borrow a sum of ₹ 6,00,000/- by agreeing to pay interest @ 2% per month. After receiving the said amount, the accused issued a post dated cheque bearing No.939903 dated 30.04.2009, amounting to ₹ 6,12,000/-, drawn at State Bank of Patiala. The said cheque on presentation was dishonored. The findings of the Court below in acquitting the accused are totally erroneous and perverse. For proving the discharge of the legal liability at the hands by the accused, the applicant-complainant had examined himself as PW-1, Gautam, Assistant Manager as PW-2 and Sh. Ravinder Kumar Clerk of Advocate Sh. P. Phutela as PW-3, even, in his evidence, tendered the registered AD Receipt Ex.P1, Legal notice Ex.P2, registered letter Ex.P3, acknowledgement Ex.P4, receipt return memo Ex.P6 issued by the Bank, Cheque Ex.PW1/B, copy of cheque referred and returned register Ex.PW2/A, account statement of accused Ex.PW2/C, statement of account of the complainant Ex.PW2/D, copy of account opening form of the accused Ex.PW2/E and copy of interest sheet of the accused Ex.PW2/F.

4. On the contrary, the accused suffered a statement under Section 313 Cr.P.C., and brought on record, defence witnesses i.e. Ranjit Singh as DW1, Arjun Dass as DW2, even, tendered in his evidence, the copy of account opening form of accused Ex.D1, statement of account of the accused Ex.D2, statement of account of Baldev Singh dated 14.12.2012

Mark A & B and details of Cheque issued by the accused Ex.D3.

5. It was further submitted that the cheque had been issued from the cheque book of the accused and the signatures were of Baldev Singh-accused, thus, there was no doubt that the cheque had not been issued for discharge of the legal liability. It was incumbent upon the accused to repel the presumption of Section 118 (g) of the Negotiable Instruments Act, 1881 (in short 'the Act'). It was not a case of the accused that he was forced to issue the cheque in favour of the Firm, thus, the finding that only two leaves out of 25 Cheques, were issued, cannot be said to be suspicious of circumstance and urges this Court for setting aside the judgment, under challenge.

6. I have heard the learned counsel for the applicant-complainant and appraised the paper book and of the view that in order to prove the issuance of cheque for discharge of a legally enforceable liability, the applicant-complainant failed to prove the presumption under Section 118(g) of the Act. The document brought on record i.e. *Rokar Bahi* is a self-serving document as it did not bear the signatures of the accused. On the contrary, the accused examined the proprietor of the complainant/Firm as DW1. The evidence weighed in the mind of the trial Court in acquitting the accused was unclenching and un-rebutted inasmuch as that the complainant in cross-examination specifically admitted that it was a blank cheque and the contents of the cheque were filled either by his Clerk or son. The complainant was required to lead a corroborative evidence that date and contents of cheque were relating back to the year 2009 or not, particularly when as per the assertion in complaint, the accused had left the commission agency in 2006, by settling all the account, in what circumstances, the accused approached the complainant, again, for obtaining the loan, in fact,

appears that the blank cheque was in the custody of the complainant in respect of the transactions of the year 2006 and had been used later on. The doubt created in the mind of the trial Court has not been repelled by direct and cogent evidence, rather it is a suspicious circumstance. Out of 25 cheques, only 2, were issued to the complainant, was itself a suspicious circumstance, even the account's statement produced by the complainant, no explanation has come forth that the entry did not mention the purpose of extending the facility of loan. The form of the pages produced by the accused through testimony of DW-2 Arjun Dass, proprietor of the Complainant, for the year 2011-12, 2012-13, 2013-14, 2014-15, revealed that *khata bahi* had been left blank. All these circumstances lead to an irresistible conclusion that the cheque was not issued for discharge of the legal liability, even the explanation given in the application seeking condonation of 329 days' delay, does not suffice the requirement of Section 5 of the Limitation Act as each and every day has to be explained.

7. Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the judgment rendered by the Court below, much less, no ground is made out for interference and accordingly, the application seeking leave to appeal, is dismissed on merits and as well as on the ground of limitation.

22.09.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**