

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

**CRM-A-791-MA-2014
Date of decision:-19.9.2017**

Satnam Kaur

...Applicant

Versus

Manjit Kaur

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.D.K. Bhatti, Advocate
for the applicant.

H.S. MADAAN, J.

Applicant – Satnam Kaur has filed this application under Section 378(4) Cr.P.C. seeking special leave to appeal.

Briefly stated, facts of the case are that complainant – Satnam Kaur had brought a criminal complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act) against Manjit Kaur alleging that accused had raised a friendly loan of Rs.2,50,000/- from the complainant and in order to discharge the legally enforceable debt, she had issued a cheque bearing No.057993 dated 26.8.2009 in the sum of Rs.2,50,000/- drawn on Bank of Punjab Ltd., MGN Public School, Adarsh Nagar, Jalandhar with the assurance that it would be honoured on presentation. However, things went otherwise and cheque was returned uncashed vide memo dated 8.10.2009 with remarks “Funds Insufficient”. Thereafter, complainant got issued legal notice dated 13.10.2009 upon the accused sent by way of registered post

as well as UPC calling upon the accused to make the payment within the stipulated period of 15 days but the accused refused to do so. As such, the complainant had filed the complaint.

After recording of preliminary evidence, accused was summoned. Notice of accusation under Section 138 of the Act was served upon him, to which, she pleaded not guilty and claimed trial.

During the course of evidence, complainant Satnam Kaur got her statement recorded as CW1 submitting her affidavit Ex.CW1/A proving original cheque bearing No.057993 dated 26.8.2009 as Ex.C1, bank memo dated 8.10.2009 as Ex.C2, legal notice dated 13.10.2009 as Ex.C3, postal and UPC receipts as Ex.C4 and Ex.C5.

Statement of accused was recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against her submitted that she was innocent and had been falsely involved in the case. She has further pleaded that complainant introduced her with one Darshan Mahajan, who was doing the committee business and he had taken four cheques from her being blank signed as security for the said committee business, which were with him; that she had paid all the installments of that committee but despite this the cheques have not been returned back by said Darshan Mahajan to her despite demanding several times and the cheque in question is one of the cheques given to said Darshan Mahajan, which has been misused by the complainant in connivance with said Darshan Mahajan and has filed the present complaint; that neither she has taken any loan from the complainant nor having any liability towards her.

However, she did not lead any evidence in defence.

After hearing arguments, the learned trial Magistrate dismissed the complaint under Section 138 of the Act, which left the complainant aggrieved and she had knocked at the door of this Court by moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the judgment of acquittal. In the said application, the applicant challenged the judgment passed by Judicial Magistrate Ist Class, Jalandhar on various grounds, ultimately praying that special leave to appeal against the order of acquittal dated 13.2.2014 passed by the Court of learned Judicial Magistrate Ist Class, Jalandhar be granted.

Notice of the application was ordered to be given to respondent – accused. The accused was served but had not put in appearance.

I have heard learned counsel for the applicant and I find that no ground is there to grant special leave to appeal.

A perusal of the judgment passed by learned trial Magistrate goes to show that she has basically dismissed the complaint for following reasons:

- (i) The complainant has failed to prove on record her financial capacity to advance a sum of Rs.2,50,000/- to the accused inasmuch as in her cross-examination, she has admitted that earlier she was working as helper in MGN Public School drawing salary of Rs.5,000/- and further for the last seven years, she has been employed in Railways and drawing the salary of Rs.20,000/- per month. Though she had

stated that amount had been advanced from the funds belonging to her deceased husband Saudagar Singh but no such document to corroborate that contention had been placed on record.

Learned trial Magistrate has relied upon pronouncement by Hon'ble Apex Court in **John K. Abraham Versus Simon C. Abraham and another, 2014(1) Apex Court Judgments 020(SC)** observing that in order to draw presumption under Section 118 read with Section 139 of the Act, the burden heavily lies upon the complainant to show that he had required funds for having advanced the money to the accused; that the issuance of cheque in support of that 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.

(ii) Admission of the complainant in her cross-examination that she was doing committee business and used to take the cheques as security from the committee; that the accused had issued four cheques to her and out of those cheques, one cheque is the cheque in question in the present complaint and other three cheques are also lying with her being blank signed and further that accused had filed a complaint against her regarding the same transaction.

These contentions create a doubt about the version set up by the complainant and support the defence case. The complainant having failed to prove her case beyond a shadow of reasonable doubt.

The trial Magistrate has referred to citation **Bhaskaran**

Nain C. Versus B.Mohan and another, 2009(5) R.C.R.(Criminal)478

observing that when the execution of the cheque is denied by the accused, the burden shifts upon the complainant to prove that the instrument was duly executed by the maker and moreover where the material produced disclosed suspicious circumstances surrounding the transaction unless satisfactory explanation removing such suspicion is tendered by the holder of the instrument, no conviction is legally permissible solely banking upon the statutory presumptions.

Thus I do not find any illegality and irregularity in the judgment passed by the learned trial Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

Therefore, no ground is made out to grant special leave to appeal in this case. The application is, therefore dismissed accordingly.

19.9.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No