

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

CRM-A-958-MA-2014(O&M)

Date of decision:-15.11.2017

Rajdev Singh Bhalla

...Applicant

Versus

Naveen Kumar

...Respondents

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

Present : Mr.Angel Sharma, Advocate
for the applicant.

H.S. MADAAN, J.

Applicant – Rajdev Singh Bhalla 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 - Rajdev Singh Bhalla had brought a criminal complaint under Sections 420/379/465/467/468/471 IPC against accused Naveen Kumar and Satish Kumar, both partners of M/s Ravina Wire Products, B-4, Textile Colony, Ludhiana on the allegations that complainant is sole Proprietor of M/s Bhalla Industries, C-164, Focal Point, Ludhiana; that there had been business dealings between such concern of the complainant and the accused during the period 17.2.1997 to 31.3.1999; that the complainant had paid the entire sale price of the goods purchased by him from the accused; that the complainant had account No.01050/012009 with SBI Focal Point; that on 28.9.1998 since the complainant was to make payment to Jindal Fastners but was not aware of the actual amount to be

paid, he left the amount blank and signed cheques No.105517 dated 28.9.1998 to Ravina Wire Products and No.105518 to Lajpat Rai Steels for giving the same to the parties of his office; that he had entrusted the cheques to his brother Hardev Singh Bhalla for giving to parties, however, when he returned on 3.10.1998 and 6.10.1998, he found that cheque No.105516 was missing, as such after making enquiries, he informed the bank to stop payment; that the account was got closed and all the unused cheques were returned to the bank except the missing cheque; that thereafter when a registered notice was received by the complainant got served upon him by the accused, then it transpired that accused had committed theft of the said cheque allegedly dated 1.8.2001 for Rs.8,31,833/- in order to defraud the complainant and after fabricating the bills raising liability; that as a matter of fact the firm of the complainant neither required nor dealt with wire rods; that complainant sent reply to the notice, then he learnt that cheque in question in fact stolen, therefore complainant filed a complaint in the Court of law.

After recording preliminary evidence, accused Naveen Kumar was summoned to face trial for the offence punishable under Sections 379 IPC, however, accused Satish Kumar was not summoned.

The complainant led pre-charge evidence. Thereafter, formal charge for the offence under Section 379 IPC was framed against the accused, to which, he pleaded not guilty and claimed trial. During post charge evidence, complainant further cross-examined Jaspal Singh as CW1 and then the accused made a statement that he did not want to cross-examine the witnesses any further and cross-examination of the

witnesses in pre-charge evidence be read.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him but he denied the allegations contending that he has been falsely implicated in the case as he had filed a complaint against Raj Dev Bhalla under Section 138 Negotiable Instruments Act for bouncing of cheque, which was given by Raj Dev Bhalla in discharge of legal liability.

In defence evidence, accused examined Hitesh Bhakoo as DW1, Parshotam Thakur as DW2 and Rajneesh Sharma as DW3.

Learned trial Magistrate had formulated the following point for determination:

Whether the complainant has been able to establish that in between 28.9.98 to 3.10.98 in the area of PS Focal Point accused dishonestly removed cheque bearing No.105516 from the possession of the complainant without his consent?

After hearing arguments, the accused was acquitted of the charge framed against him, which left the complainant aggrieved and he 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 besides moving an application for condonation of delay in filing the appeal which has been filed belatedly by 322 days.

I have heard learned counsel for the applicant besides going through the record.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

Section 5 of that very act provides that any appeal or any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. Here though the complainant – appellant has moved such application but no satisfactory or plausible explanation has been given. Therefore, I do not see any reason to accept the application and to condone the delay of 322 days in filing the appeal. The application for special leave to appeal is bound to be dismissed for that very reason.

On merits also, I do not see any reason to accept the request. The story set up by the complainant in the complaint seems to be highly unconvincing and unnatural. The complainant is not shown to have informed the police regarding the alleged episode at the earliest. If a person is aggrieved on account of criminal acts committed by the other, the first and natural reaction is to intimate the police in that regard so as to get necessary action initiated against the criminal but here the complainant has failed to render any reasonable or plausible explanation for not informing the police at the first instance. The trial Court has discussed in detail various circumstances giving rise to causing doubt in the mind about truthfulness of story put forward by the complainant. 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.

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

15.11.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No