

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

**CRM-A-609-MA-2013
Date of decision:-4.4.2018**

Smt.Anita Devi

...Applicant

Versus

Sunil @ Surender Singh and another

...Respondents

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

Present : Mr.N.S. Shekhawat, Advocate
for the applicant.

Mr.Gaurav Bansal, AAG, Haryana
for respondent No.2 - State.

H.S. MADAAN, J.

Applicant – Smt.Anita Devi 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 – Smt.Anita Devi had brought a criminal complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act) and 420 IPC against accused Sunil @ Surender Singh on the allegations that to help the accused Sunil @ Surender Singh, an acquaintance to tide over the financial crises, she had advanced a loan of Rs.2 lakhs to him after obtaining a cheque of that amount from the accused; that the accused had also issued a receipt in favour of the complainant besides issuing of cheque bearing No.038714 dated 19.1.2009 for the sum of Rs.2 lakhs drawn on ICICI Bank, Limited Branch Janakpuri, New

Delhi; that the complainant had presented the cheque for encashment in her account with her banker, namely, Gurgaon Gramin Bank, Jharsa Road, Gurgaon but it was returned unpaid by the banker of the accused with remarks "Funds Insufficient" vide memo dated 15.6.2009; thereafter, the complainant got issued legal notice dated 22.6.2009 upon the accused calling upon him to make the payment within the stipulated period of 15 days but to no effect. As such, the complainant had filed the complaint.

After recording of preliminary evidence, accused was summoned, who put in appearance and was admitted to bail. Notice of accusation under Section 138 of the Act was served upon him, to which, he pleaded not guilty and claimed trial.

The complainant led evidence both oral as well as documentary.

Statement of accused was recorded under Section 313 Cr.P.C. in which he denied the incriminating circumstances appearing against him. He further denied his liability to pay anything to the complainant.

However, he did not lead any evidence in defence.

After hearing arguments, learned Judicial Magistrate Ist Class, Gurgaon vide judgment dated 16.3.2012 convicted accused Sunil @ Surender Singh for the offence under Section 138 of the Act and vide order dated 17.3.2012, the accused was sentenced to undergo simple imprisonment for a period of one year and to pay compensation double of the cheque amount i.e. Rs.4 lakhs to the complainant.

The accused/convict preferred an appeal against the said

order in the Court of Sessions, which was assigned to learned Additional Sessions Judge, Gurgaon, who vide judgment dated 17.4.2013 accepted the appeal, set aside the judgment of conviction and order of sentence passed by learned Judicial Magistrate Ist Class, Gurgaon and acquitted the accused of the notice of accusation 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. Along with that, an application under Section 5 of the Limitation Act for condonation of 8 days delay in filing of the application was also filed, which was allowed.

Notice of the application under Section 378 (4) Cr.P.C. 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.

While coming to the conclusion that the complainant had failed to prove that accused had committed an offence under Section 138 of the Act, learned Additional Sessions Judge has considered various facts, which are as under:

In para No.13 of the judgment referring to cross examination of complainant Smt.Anita Devi when she appeared as PW1, learned Additional Sessions Judge, Gurgaon has observed that she could not give convincing reply as to why she lent an amount of Rs.2 lakhs to the accused as there is nothing to show that she was a close relative of the accused or for that

matter her husband was having good relationship with him. Reply given by her in her cross-examination in support of such contention has been discussed in para No.13 of the judgment. Learned Additional Sessions Judge, Gurgaon has drawn an inference that from the replies given by the complainant in her cross-examination, falsity of her case that she lent Rs.2 lakhs vide disputed cheque to accused, came to be fore. Going further, he has observed that in her entire complaint, the complainant has not mentioned the date of advancement of loan in question to accused. She has not mentioned the date of execution of receipt. There is nothing to show that cheque Ex.P1 was post dated cheque pertaining to some previous transaction. The cheque bearing dated 19.1.2009 but there is no corresponding receipt pertaining to the transaction of the year 2009. The complainant herself stated that after September, 2008, she did not enter into any transaction with the accused. In receipts Ex.R1 to Ex.R3, there is no reference as regards some interest to be paid by the accused on the said amounts of Rs.2 lakhs, 1.5 lakhs and Rs.1 lakh, respectively. Failure of the complainant to dispel doubt as to the sequence of events and circumstances under which the loan was advanced.

Inability of the complainant to explain her financial capacity to have a huge amount of Rs.10.5 lakhs including disputed amount of Rs.2 lakh, in light of the fact that no documentary evidence was brought on record to show her source of income and there being nothing to show that she is an income

tax assessee.

Presumption under Section 139 of the Act in favour the complainant getting rebutted.

Thus I do not find any illegality and irregularity in the judgment passed by the learned Additional Sessions Judge, Gurgaon. 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.

4.4.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No