107.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-898-MA-2013
Date of decision:06.12.2018.

BALWAN SINGH ... Applicant

Versus

RAJ KUMAR .... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. S.P. Chahar, Advocate, for the applicant.

Mr. N.K. Malhotra, Advocate, for the respondent.

HARI PAL VERMA, J.*(Oral)*

Through the present application seeking leave to appeal, the applicant-complainant has approached this Court impugning the order dated 26.11.2012 whereby his complaint filed under Section 138 of Negotiable Instruments Act and Section 420 of IPC, was dismissed.

Briefly stated, on 04.09.2007, the complainant advanced a loan of Rs.5 lakhs to the respondent-accused in the presence of witnesses, namely, Kamal Sharma and Ramesh Kumar and also executed a pronote. The accused, in order to discharge his liability, issued a cheque bearing No.368241 dated 07.06.2010 amounting to Rs.5 lakhs in favour of the complainant drawn on Haryana Keshtriya Gramin Bank Jassia, Rohtak. However, when the said cheque was presented for encashment to his banker, the same was returned vide memo dated 09.06.2010 with the remaks "Insufficient Funds". The complainant served a legal notice dated 10.06.2010, but the accused failed to repay the said amount. Hence, the complaint was filed.

The trial Court, vide order dated 26.11.2012, acquitted the accused of the offence under Section 138 of Negotiable Instruments Act, by observing that it is difficult to believe that a person, who is not an Income Tax Assessee though having a Pan Card, has advanced such a huge amount of Rs.5 lakhs. The complainant could not prove his plea that he received that very amount from the government on acquisition of his land, as he could not produce any document in support of his plea. The execution of the pronote could not be proved as the complainant neither produced the original pronote nor any witnesses thereof.

It is in the aforesaid circumstances, the applicant has filed the present application seeking leave to appeal.

Learned counsel for the applicant has argued that the respondent-accused in his statement under Section 313 Cr.P.C. has not denied the issuance of cheque. The trial Court has erred in considering that the complainant has no source of income, whereas on account of acquisition of his land by the Government, the complainant received an amount of Rs.5 lakhs, which he gave to the respondent-accused.

Heard.

Since the applicant-complainant has neither produced the original pronote nor has examined the witnesses who signed the pronote, coupled with the fact that the trial Court found that the complainant was not found to be an Income Tax Assessee though possessing a Pan Card, this Court finds that there is no illegality in the order dated 26.11.2012 passed by the trial Court.

Dismissed.

(HARI PAL VERMA)
JUDGE

06.12.2018
sanjeev

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