IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1183-MA-2017 (O&M)
Date of Decision: 16.01.2018

Rakesh

.......appellant

Versus

Parveen

........Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Arun Singal, Advocate for the applicant/appellant.

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TEJINDER SINGH DHINDSA J.

CRM-17430-2017

Instant application has been filed under Section 5 of the Limitation Act seeking condonation of 4 days delay in filing the accompanying appeal.

In view of the averments made in the application duly supported by an affidavit of the applicant/appellant, prayer is allowed.

Delay condoned.

Application disposed of.

Main case

This order shall dispose of the instant application preferred under Section 378 Clause (4) Cr.P.C. seeking leave to appeal against the order dated 16.02.2017 passed by the JMIC, Panipat in the light of which the respondent has been acquitted and exonerated in a complaint under Section 138 of the Negotiable Instruments Act (hereinafter to be referred to as the Act).

Brief facts are that a complaint was presented by the applicant alleging that the respondent in discharge of his liability had issued a cheque bearing No.755955 dated 15.08.2011 for Rs.2,50,000/- drawn on ICICI Bank, Panipat, in favour of the complainant. Upon presentation of the cheque for encashment the same was returned unpaid with remarks "Funds Insufficient" vide memo dated 07.01.2012. Statutory legal notice dated 01.02.2012. was duly served upon the respondent, yet, he had failed to make good the payment of the cheque within the stipulated time period of 15 days.

After the stage of preliminary evidence respondent was summoned to face trial for offence punishable under Section 138 of the Act. Having put in appearance, respondent was admitted to bail and was thereafter served with a notice of accusation under Section 138 of the Act to which he pleaded not guilty and claimed trial.

In the ensuing trial and upon appreciation of evidence adduced on record, the defence version set up on behalf of the respondent that the cheque in question was in the nature of a security cheque and not issued in discharge of any legally enforceable debt or liability, has been accepted by the Trial Court in the light of the impugned order dated 16.02.2017.

Learned counsel for the applicant has argued that since the respondent had admitted the due issuance as also signatures on the cheque the presumption under Section 118 read with Section 139 of the Act had to be drawn and the burden thereafter had shifted to the respondent to demonstrate that he had no liability to pay the amount and such burden has not been discharged. With regard to the financial capacity of the applicant to have advanced the loan of Rs.2,50,000/- to the respondent, counsel submits that such amount had been raised on account of having sold a plot.

Having heard learned counsel for the applicant/appellant, I am of the considered view that the submission advanced is without merit.

It is well settled that in proceedings under the Negotiable Instruments Act, the Court should proceed with a presumption that whenever a cheque is issued by a person, such cheque is towards discharge of a legally enforceable debt or other liability unless the drawer proves that it is not so. As per Section 139 of the Act, the burden to rebut the presumption lies upon the accused, failing which it would be clear that the cheque was given by the accused to a complainant in discharge of his liability.

It is equally well settled that in order to draw the presumption under Section 118 alongwith Section 139 of the Act, the burden would be heavily upon the complainant to demonstrate that he had the requisite funds that were allegedly advanced to an accused. Where a complainant fails to prove that he has means to advance a huge amount as he himself had been borrowing money from others, the burden placed upon the accused would stand discharged inspite of the fact that the accused himself had not been examined as a witness. In other words complainant himself has to show that he had the financial capacity to advance a heavy loan to the accused. Reference in such regard may be made to the decisions of the Apex Court in ***John K. Abraham Vs. Simon C. Abraham and another 2014 (1) PLR 787*** and ***K. Prakashan Vs. P.K. Surenderan 2007 (4) CCC 713*** .

Adverting to the facts of the present case the Trial Court has observed that the complainant in his cross-examination had stated that he is an income tax assessee and in the last ITR had reflected his income to be around Rs.2,50,000/- but no income tax return had been adduced on record. Furthermore complainant had deposed that he maintains two bank accounts but the bank statement pertaining to such accounts had also not been produced in evidence. Even though it was the case projected that the funds for advancing a friendly loan of Rs.2,50,000/- had been arranged on account of sale of plot yet counsel during the course of arguments before this Court has fairly conceded that there was no evidence/document to substantiate the sale of any plot at the relevant point of time..

The onus was heavy upon the complainant/applicant to demonstrate that he had the requisite source of income and capacity to lend Rs.2,50,000/- to the accused but such onus has not been discharged. It is strange that complainant did not even taken a receipt from the accused while advancing loan of a heavy amount of Rs.2,50,000/-.

It is settled that interference in an appeal would be called for only if the judgment under appeal is found be perverse or based on mis-appreciation of evidence. Interference would not be justified merely because this Court was to be inclined to take a different view. Counsel for the applicant/appellant has failed to point out any perversity/misleading of oral or documentary evidence on record.

For the reasons recorded above, no case for interference is made out. The application seeking grant of special leave to appeal against the impugned order dated 16.02.2017 is dismissed and consequently even the accompanying appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

16.01.2018
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No