IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-21936 of 2015 in/and
CRM-A-1161-MA-2015 (O&M)
Date of Decision:09.02.2018

Surinder Singh

.......Appellant

Versus

Avtar Singh

........Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. S.S. Toor, Advocate for the applicant/appellant.

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TEJINDER SINGH DHINDSA J.

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 05.05.2014 passed by the JMIC, SAS Nagar, Mohali, 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.321012 dated 15.02.2009 for Rs.5,30,000/- drawn at Punjab National Bank, Kharar, in favour of the complainant. Upon presentation of the cheque for encashment the same was returned unpaid with remarks “Funds Insufficient” vide memo dated 28.02.2009. Statutory legal notice dated 15.04.2009 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 05.05.2014.

Learned counsel for the applicant has argued that the Trial Court has misread the evidence on record. It had been specifically deposed by the complainant/ applicant that he had withdrawn Rs.7,05,000/- from his account on 25.06.2008 and out of this Rs.5,30,000/- had been given to the respondent as a friendly loan. The documentary proof of statement of account reflecting withdrawn of Rs.7,05,000/- from State Bank of India, Branch Sector 30, Chandigarh, had been adduced on record as Ex.D3 and which has been over-looked. Further submission raised by counsel is that the conduct of the respondent in having failed to reply to the legal notice and thereafter having prolonged the proceedings before the Trial Court over a period of almost 5 years was sufficient to convict the respondent for offence under Section 138 of the Act. Yet another submission raised by counsel is that the Trial Court has erred in having taken into consideration other loans that the complainant/applicant had taken from other Banks. It is urged that such aspect was wholly irrelevant and had no bearing insofar as the friendly loan advanced to the respondent and the dishonour of the cheque in question which had been given by the respondent to the complainant towards discharge of a legally enforceable debt.

Having heard learned counsel for the applicant/appellant, I am of the considered view that the submissions advanced are 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 complainant had stated in his cross examination that the loan of Rs.5,30,000/- had been advanced in the presence of one Daljit Singh. However for reasons best known to the complainant/applicant such witness namely Daljit Singh had been held back and was not examined. The name of Daljit Singh was not even mentioned in the complaint.

That apart complainant in his deposition admitted that in the year 2004 he had taken loan of Rs.12,000,00/- from UCO Bank and such amount was still outstanding. Respondent has examined DW1 Tilak Bhushan Mehta, Senior Manager of UCO Bank, Phase-I, Mohali, who deposed that complainant has taken a building loan of Rs.12,00,000/- on 03.02.2004 and the amount of loan had not been repaid. Accordingly, the loan amount had been declared as NPA. Respondent had also examined DW2 P.S. Bhadwan, Senior Manager of UCO Bank, Sector 22, Chandigarh and who deposed that the complainant/applicant had taken a loan of Rs.10,000,00/- on 27.10.2005 and had not repaid the same and his liability against such loan had swelled to Rs.12,72,928/-

Afore-stated evidence would clearly show that the complainant/applicant in the month of June 2008 was himself a defaulter pertaining to different loans having been advanced to him by UCO Bank and as such was not in a position to have given a friendly loan to the accused.

The version of the respondent with regard to the cheque in question being a security cheque was set up in the statement recorded under Section 313 Cr.P.C. He had stated that a car loan had been taken in the name of the complainant from ICICI Bank, Sector 9, Chandigarh of Rs.5,30,000/-. At that stage the complainant had taken a blank cheque from the respondent as security to be furnished to the Bank towards repayment of loan. Car bearing registration No.PB-65-E-8020 was purchased in the name of the complainant. The car loan had been repaid infact by the accused to the bank and in lieu thereof the car had been transferred in the name of the brother of the accused namely Jitender Singh. It was stated that even though the loan amount had been repaid but cheque in question was not returned by the complainant and rather misused. Adduced in evidence was a receipt Ex.D8 upon which the complainant admitted his signatures and as per receipt the car in question had been sold to brother of the accused and it was also recited that the complainant had got sanctioned a loan of Rs.5,30,000/- for the purchase of the car from ICICI Bank. The Trial Court has rightfully concluded that the contents of the receipt Ex.D8 lends credence to the statement of the accused recorded under Section 313 Cr.P.C. as regards the cheque being a security cheque.

The reasoning adopted by the Trial Court forming an opinion that the respondent has raised a defence against the presumption envisaged under Section 118 and 139 of the Act, cannot be faulted with. Such view has been taken on valid and cogent basis and on a correct appreciation of the evidence adduced on record.

No ground for interference as such is made out.

Applicant has also filed CRM-21936 of 2015 i.e. an application under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of delay of 346 days in filing the appeal. It was incumbent upon the applicant to explain each day of delay. Even such application seeking condonation has been filed in a casual manner. There has been an inordinate delay in the matter. Prayer for condonation of delay as such is declined.

Application is dismissed.

For the reasons recorded above the prayer for grant of special leave to appeal against the order dated 05.05.2014 passed by the JMIC, SAS Nagar, Mohali, is declined and consequently even the accompanying appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

09.02.2018
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No