

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

CRM-A-407-MA-2016 (O&M)

Date of Decision:16.11.2018

Kamal Kumar

... Appellant

Vs.

Arun Kalia and another

... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present : Mr. Anil Verma, Advocate
for the applicant-appellant.

Mr. M.S. Sachdeva, Advocate
for the respondents.

KULDIP SINGH, J. (Oral)

This order will dispose of application filed under Section 378 (4) Cr.P.C to grant special leave to appeal against judgment dated 3.10.2015 passed by the learned Judicial Magistrate Ist Class, Jalandhar whereby the complaint filed by the complainant under Section 138 of the Negotiable Instrument Act, was dismissed.

Complainant has claimed that he was a book binder and accused No.1 is running a printing press in the name and style of Syndicate Printers. Parties are having friendly relations. Accused No.1 approached the complainant and told him that he is in need of money for purchasing some machinery and papers etc. Since, accused No.1 had developed close relations with the complainant, complainant advanced loan of Rs.7,00,000/- to the accused as friendly loan after withdrawing the same from his account. In order to discharge the liability, accused no.1 issued a post dated cheque bearing No.045985 dated 30.05.2013 for a sum of Rs.7,00,000/-. When the cheque was presented, the said cheque was dishonoured by the banker of accused no.1 vide return memo datd 05.06,2013 with the remarks "Payment Stopped by Drawer". On the assurance of the accused No.1, complainant

again presented the said cheque but the same was again dishonoured vide memo dated 26.07.2013 with same remarks. After the complainant led the preliminary evidence, accused was summoned and was served with notice of accusation under Section 138 of the Negotiable Instrument Act. Thereafter, evidence of both the parties were recorded. After hearing both the parties, learned Magistrate dismissed the complaint.

I have heard learned counsel for the parties and have gone through the record of the case.

Plea taken by the accused before the trial court in a statement record under Section 313 Cr.P.C is that cheque in question along with some other cheques were lost for which DDR No.436 dated 15.08.2013 was registered. Before the trial court accused No.1 has also examined his Handwriting and Finger Print Expert Shri Arvind Sud who has given the opinion that signatures on the cheque do not tally with the specimen signature. In order to satisfy myself, I have gone through the signatures of the accused no.1 on the statement recorded under Section 313 Cr.P.C., the affidavit submitted to the parties, intimation regarding loss of cheques and intimation of the accused no.1 to the bank and other available signatures, I am of the view that signatures of the accused no.1 on these documents are entirely different from the alleged signatures of the accused no.1 on the said cheque. There is no comparison at all. Therefore, signatures on the cheque do not tally with the specimen signatures of the accused no.1. When the accused no.1 was examined as DW-5, question was put to him that with malafide intention got the cheque signed from some one else and handed over the same to the complainant. If it is so, it is to be held that alleged signatures of the accused no.1 were not authored by the accused. Therefore,

complaint filed under Section 138 of the Negotiable Instruments Act will collapse on this short ground. The trial court has taken into consideration the other grounds that no written affidavit was executed relating to loan which may not be executed due to friendly relations. The trial court has also taken into consideration cheque book wherein enteries were made later on. Even assuming that if said enteries were made later on and bank was intimated later on, the offence under Section 138 of the Negotiable Instrument Act is not made out since signatures of the accused no.1 are not there on the disputed cheque. Therefore, there is no illegality or infirmity in the judgment passed by the trial Court.

Accordingly, application filed under Section 378 (4) Cr.P.C to grant special leave to appeal is dismissed.

16.11.2018
rajeev

(Kuldip Singh)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**