IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A- 1329-MA-2014 (O&M)
Date of decision: 21.11.2018

Samra Leasing Limited

…..Applicant

versus

Manmohan Singh

……Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.K.S.Dhillon, Advocate for the applicant
Mr.Sandeep Arora, Advocate for the respondent

1. Whether Reporters of Local newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Kuldip Singh, J.

This order will dispose of an application filed under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment of acquittal dated 10.6.2014 passed by learned Judicial Magistrate First Class, Jalandhar.

Facts of the case are that the complainant alleges that accused-respondent took a loan of Rs.4,46,500/- from him on 5.11.2001 for purchase of a Tata Bus Model 1999 bearing registration no.HP-19-3791 and executed a hire purchase agreement (Ex.C3) dated 5.11.2001. Accused agreed to pay the said loan in 36 equal installments within 3 years. As on 31.8.2008, the total due amount was Rs.10,19,225/-. In order to partly discharge the said liability, the accused-respondent issued a cheque No.740816 dated 18.8.2008 for Rs.Seven lakhs, drawn on Punjab National Bank, Una Branch, Himachal Pradesh. The cheque when presented was dishonoured vide memo dated 10.9.2018 and 16.9.2018 with the remarks "funds insufficient". After issuing legal notice dated 24.9.2008, case was filed.

After recording the preliminary evidence, the accused-respondent was summoned. Thereafter, accused-respondent was served with the notice of accusation, to which, he pleaded not guilty. Thereafter, the complainant led evidence. Statement of accused-respondent was recorded. Accused-respondent also led defence evidence.

After hearing both the parties and going through the evidence, the complaint was dismissed.

I have heard learned counsel for both the parties and have also carefully gone through the judgment of the lower Court as well as lower Court record.

Statement of Mandeep Kumar, Licence Clerk, office of Registration and Licensing Authority, Amb, Una proved the registration certificate of vehicle bearing registration no.HP-19-3791 (Ex.D1).

Statement of DW1 shows that the vehicle bearing registration no.HP-19-3791 was purchased by the accused-respondent only in the year 2004 and there was no hypothecation in favour of the complainant company. This is against the claim of the complainant that the loan was advanced and hypothecation agreement was executed. In fact, the said evidence shows that there was hypothecation in favour of the complainant M/s Samra Leasing Limited, which was got cancelled on 1.10.2001. Therefore, the claim of the complainant that loan was advanced for hire purchase agreement in the year 2001 stands falsified and was rightly held so by the trial Court. The loan was to be returned in 36 equal installments after 5.11.2001 i.e. in three years. After that there was a three year limitation to recover the loan. Therefore, the loan became time barred in November 2007. Complainant did not claim that any installment was paid. It is claimed that as on 31.8.2008, a sum of Rs.10,19,225/- was due for which cheque of Rs.

Seven lakhs was issued on 18.8.2008. At that time the debt was time barred.

Trial Court relied upon the various authorities to hold that the cheque should be for legally enforceable debt. Since, the debt was not legally enforceable, therefore, liability under Section 138 of Negotiable Instruments Act, 1881 does not arise. It further comes out that the accused-respondent had himself proved the receipt Ex.DB showing that a payment of Rs. Three lakhs was made by the complainant to the accused. However, no payment of Rs.4,46,500/- was made. CW1 tried to explain the said fact by stating in cross examination, that Rs.Three lakhs was the principal amount and that sum of Rs.4,46,500/- includes the hire purchase charges.

I am of the view that it is not the case of the complainant in the complaint that a loan of Rs.three lakhs was advanced and that total sum was calculated at Rs.4,46,500/-, including hire purchase charges. In fact, hire purchase charges are not claimed at all and only interest has been claimed in the hire purchase agreement. It cannot be believed that for all those seven years, the complainant remained mum to ensure that his name is not included in the Registration Certificate on account of hire purchase agreement.

The trial Court has taken one of the two possible views which is supported by reasoning and law. There is no ground to interfere in the said judgment.

Hence, the application for grant of leave stands dismissed.

21.11.2018 **(Kuldip Singh)**
gk **Judge**

Whether speaking/ reasoned: Yes
Whether Reportable: No