

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

**CRM-A-180-MA-2015
Date of decision: 10.08.2018**

Atamjit Singh

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. N. S. Dandiwal, Advocate
for the applicant.

ARVIND SINGH SANGWAN, J. (Oral)

This application has been filed under Section 378(4) of the Code of Criminal Procedure seeking grant of special leave to appeal against the judgment dated 21.11.2014, passed by the Chief Judicial Magistrate, Moga, vide which, the complaint bearing No. 39-2 dated 02.04.2013, filed by the applicant-complainant, under Sections 138(b)/142 of the Negotiable Instruments Act, 1881, was dismissed.

Brief facts of the case are that the applicant-complainant filed the aforesaid complaint with the allegations that in order to discharge the liability of a loan of ₹70,000/-, the respondent-accused issued a cheque No. 543112 dated 01.03.2013 for ₹70,000/-, drawn on Canara Bank from his saving account. When the applicant-complainant presented the said cheque to the Bank, the same was returned with the remarks '*insufficient funds*', vide memo dated 11.03.2013. Thereafter, the complainant served a legal notice dated 16.03.2013 upon the respondent-

accused at his known address, however, the respondent-accused failed to respond or clear his liability of the cheque amount. Thereafter, the present complaint was filed. In the preliminary evidence, the applicant-complainant appeared himself as CW-1 and deposed on the version given in the complaint. The applicant-complainant tendered in evidence the cheque Ex. C-1, bank memo Ex. C-2, legal notice Ex. C-3 and postal receipt Ex. C-4.

Thereafter, the trial Court, vide order dated 03.04.2013, summoned the respondent-accused to face trial. Respondent-accused appeared before the trial Court and was released on bail. The respondent-accused, as per his statement dated 26.09.2013, did not plead guilty and claimed trial. The case was then fixed for post charge evidence of the complainant.

The complainant appeared himself as CW-1 and reiterated the version given earlier. The respondent-accused was granted a right to cross-examine the complainant. The complainant proved the aforesaid documents as Ex. C-1 to Ex. C-4 and closed the evidence.

In the statement of the accused, recorded under Section 313 Cr.P.C, the incriminating evidence was put to him, to which, he denied and pleaded false implication in the case. The respondent-accused further submitted that the applicant-complainant is running a finance company in the name and style of M/s Grewal Brar Finance Company at Moga. The respondent-accused had taken a loan of ₹25,000/- from the said company and had handed over certain blank cheques as security documents including the cheques No. 543111, 543112 and 543113 drawn on Canara Bank from his saving bank account No. 60468. It is further stated that he had returned

the loan amount and the said finance company issued receipts Ex. D-1 to Ex. D-11 in this regard. When the respondent-accused demanded his blank cheques back after returning the loan amount, the applicant-complainant, instead of returning the blank cheques, had misused the same by way of filing the present complaint. The respondent-accused denied that he has received any amount of loan from the applicant-complainant against which the cheque in dispute was issued.

In defence, the respondent-accused examined DW-1 Sanjay Kumar who proved the income tax returns, Ex. D-12 to Ex. D-14, of the said finance company. Thereafter, the trial Court, vide impugned judgment dated 21.11.2014, acquitted the respondent-accused of the charge. The operative part of the judgment reads as under:

“13. Appraisal of the evidence led by both the parties shows that as per the story of complainant, accused owed a sum of Rs. 70,000/- from him, but no specific date has been mentioned by the complainant. He simply stated that accused owed a sum of Rs. 70,000/- and in order to discharge his liability, accused issued a cheque Ex. C1 for Rs. 70,000/-, drawn on Canara Bank, Moga. As compared to the version of the complainant, defence raised by the accused appears to be more logical. Plea of the accused is that he borrowed Rs. 25,000/- from the finance company of the complainant and then complainant received 3 blank cheques and other signed documents. CW1 Atamjit Singh during his cross-examination has admitted that he is partner of Grewal Brar Finance Company. He further stated that he does not remember as to how many documents are got signed from the borrower when any loan is given. He has further admitted that he has seen receipts Ex. D1 to Ex. D11 which were signed by his employees Sanjay Kumar and

Baldev Singh. He further admitted that name, date and amount filled in the cheques is in his hand writing. On the one hand complainant has alleged that said loan of Rs. 70,000/- was given to the accused in his personal capacity. On the other hand, he failed to explain as to why receipts Ex. D1 to Ex. D11 were issued to the accused. Total amount of receipts Ex. D1 to Ex. D11 is more than Rs. 25,000/-.

14. Mere a glance of complaint makes it clear that purpose for obtaining Rs. 70,000/-, as alleged by the accused, has not been mentioned. Though financial capacity of the complainant is not under question, yet the genuineness of the cheque Ex. C1 has not been proved beyond shadow of reasonable doubt. Matter does not end here. Rather, the complainant has totally failed to prove as to why amount of Rs. 25,000/- given to the accused was not shown in the income tax return Ex. D12 to Ex. D14 as proved by DW1 or in any document. DW1 has also admitted during his cross-examination that accused Surjit Singh had taken loan from their finance company for Rs. 20,000/- and he returned the said loan and again he had taken loan of Rs. 11,000/- and the same was returned by him. As per the admissions of the complainant, a doubt has crept in the mind of the Court, which always goes in favour of the accused. Moreover, it is not unknown that there is general tendency among finance companies to misuse the blank documents given by poor borrower persons. Therefore, in the light of above said discussion, I am of the considered view that complainant has failed to prove the back-bone of the case i.e. cheque in question Ex. C1 and as such, no offence is made out against the accused under Section 138 of the Negotiable Instruments Act. Accordingly, accused is hereby acquitted of notice served upon him, after giving benefit of doubt. File be consigned to the Record Room, after due

compliance.”

This application, seeking leave to appeal against the aforesaid judgment, is pending since 2015 and lower court’s record was requisitioned.

Learned counsel for the applicant-complainant has argued that the applicant has proved the cheque Ex. C1, which was dishonoured by the bank as the respondent-accused failed to discharge his liability of ₹70,000/-. It is next argued that the respondent-accused has not denied his signature on the cheque and, therefore, the trial Court has wrongly refused to draw a presumption in favour of the complainant. It is further argued that in the deposition of the applicant-complainant as CW-1, he has clearly stated that respondent-accused has taken a loan of ₹70,000/- and, therefore, the cheque was issued in discharge of a legally enforceable debt.

After hearing learned counsel for the applicant-complainant, I find no force in the present application for the following reasons:

A) A perusal of the complaint as well as legal notice shows that the only allegation with regard to loan in para 1 of both the documents reads as under:

In the complaint: ***“That accused owe Rs. 70,000/- to complainant.”***

In the legal notice: ***“That you owe Rs. 70,000/- to my clients.”***

Thus, no date, month or year of advancement of loan has been mentioned in the complaint or in the legal notice.

B) In the cross-examination of the complainant, he has clearly admitted that he is a partner in M/s Grewal Brar Finance Company, Moga and he has also admitted that the respondent-accused has taken a loan of

₹25,000/- from the said finance company and had returned the same in installments. Thus, the defence set up by the respondent-accused by way of the receipts, Ex. D-1 to Ex. D-11, shows that the respondent-accused had in fact taken a loan from the said finance company and had returned the same. The respondent-accused has also proved on record the income tax returns of the finance company to prove his defence whereas in the cross-examination of the applicant-complainant, it is clearly stated that he does not know whether he had shown the advancement of loan of Rs. 70,000/- in favour of the respondent-accused in his income tax returns or not. Thus, the factum of advancement of loan is doubtful.

C) A perusal of the cheque, EX. C-1, further shows that only signature of respondent-accused Surjit Lal is written in Punjabi, whereas, the payee of the cheque, date, amount in figures and words have been filled up by a different person in a different handwriting. Though, this does not raise any suspicion about the presumption, however, the applicant-complainant has failed to prove it by putting this cheque in the statement of the respondent-accused under Section 313 Cr.P.C. that he was aware of the fact of the contents of the cheque, written in English language, and he was made to understand the contents before presentation of the same to the bank. The trial Court has rightly recorded a finding of fact that from the complaint, the applicant-complainant has failed to prove the advancement of loan of ₹70,000/- to respondent-accused as the same was not shown in the income tax return, Ex. D-12 to Ex. D-14, produced by defence witness DW-1 Sanjay Kumar.

D) In the cross-examination of the applicant-complainant, he has admitted that the respondent-accused had taken a loan from the finance

company and he has returned the same and, thereafter, again he had taken loan of Rs. 11,000/- and returned the same. Therefore, it could be easily gathered that the respondent-accused was taking small loans from the finance company of the applicant-complainant and was returning the same in installments as is clear from the receipts Ex. D-1 to Ex. D-11 and in such circumstances, the applicant-complainant has failed to explain in his complaint and the legal notice as to when and for what purpose, the amount of ₹70,000/- was taken by the respondent-accused, specially when in the complaint neither any date, month, year nor the purpose is mentioned.

Therefore, I find no illegality in the impugned judgment dated 21.11.2014, passed by the trial Court, acquitting the respondent-accused.

Consequently, the present application, seeking leave to appeal against the aforesaid judgment, is hereby dismissed.

August 10, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No