IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-2084-MA-2015 (O&M)
Date of decision : 8.3.2018
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Rajeshwar ....Applicant

vs.

Mohinder Singh and another ....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Mohinder Kumar, Advocate
for the applicant.

None for the respondents.
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H. S. Madaan, J.

Complainant Rajeshwar had brought a complaint under Section-138 of the Negotiable Instruments Act, against accused Mohinder Singh and Rajiv on the allegations that in July 2009, the accused had approached the complainant for grant of a friendly loan of Rs.3 lacs agreeing to repay the same within 12-18 months, but they did not do so, rather they issued cheques Nos. 467019 and 467020 dated 2.7.2012 in the sum of Rs.1.5 lacs each drawn on Punjab State Co-operative Bank Limited, Sector 37 Chandigarh. However when the cheques were presented for encashment by the complainant through his banker, those were received back uncashed due to insufficiency of funds in the account of the accused. The complainant was informed accordingly vide memo of the bank dated 7.7.2012. Thereafter he issued a legal notice dated 17.7.2012 to the accused calling upon them to make payment of the cheque amounts within 15 days of the receipt of notice but to no effect. Thereafter the complaint was filed.

After recording of preliminary evidence accused were summoned to face trial. They put in a appearance. Notice of accusation for offence under Section 138 of the Negotiable Instruments Act was served upon the accused, to which they pleaded not guilty.

The case was fixed for evidence of complainant,during the course of which complainant got his statement recorded as CW-1, tendering his affidavit as Exhibit CW-1/A, repeating on oath the assertions as given in the complaint, tendering documents Exhibits C-1 to C-6. He further examined CW-2 Harinder Singh, clerk Punjab State Co-operative Bank, Chandigarh who brought the record regarding account of the accused. CW-3 Sonu supported the case of the complainant on material points. With that the evidence of complainant stood closed.

Statements of accused were recorded under section 313 Cr.P.C in which all the incriminating circumstances appearing against the accused were put to them but they denied the same. Accused Mohinder Singh stated that he had not obtained any loan of Rs.3 lacs from the complainant and the cheques were handed over to Sonu and not to the complainant; that he never came in contact with the complainant; that the cheques were misused at the instance and in connivance with Sonu and he does not owe any amount to the complainant. Accused Rajiv stated that neither the complainant nor

Sonu are known to him and he never came in their contact, that he is not aware of any transaction between complainant, Sonu and his father Mohinder Singh and he has been falsely involved in this case. The accused did not lead any evidence in defence.

After hearing the arguments the trial Magistrate dismissed the complaint and acquitted the accused of the notice of accusation served upon them.

Feeling aggrieved the complainant has approached this court by way of moving an application for grant of special leave to appeal, notice of which was given to the respondents, who put in appearance through counsel.

I have heard learned counsel for the applicant besides going through the record.

A perusal of the impugned judgment passed by the trial Magistrate goes to show that while coming to the conclusion that the complainant has been unable to prove the charge against the accused the trial court has given the following reasons:-

1) the complainant has been unable to prove that he had friendly relations with the accused, to an extent that he had advanced a friendly loan of Rs.3 lacs to them without interest for a period of 12-18 months;
2) the complainant being unable to show the purpose for which the accused had obtained the loan from him;
3) it being improbable and unnatural that the complainant having a monthly income of Rs.9000/- with a family to support could advance a huge amount of Rs.3 lacs to

the accused, without interest, that too being unaware of the purpose for advancement of loan;

4) there being no document to show that the complainant had lent Rs.3 lacs to the accused and accused had acknowledged the receipt of the same;

5) CW-3 Sonu who claimed to have seen the entire transaction has stated in his statement that no document was executed between the parties, putting a big question mark over the genuineness of the alleged loan transaction;

6) material contradictions between the statements of complainant and CW-3 Sonu with regard to nature of relationship between the parties, the persons present and the time of advancement, the date of advancement, issuance of cheques, execution of documents, repayment schedule etc.;

7) failure of the complainant to plead or prove repayment schedule i.e. time and place of repayment,mode of repayment;

8) failure of the complainant to show his financial capacity to advance Rs.3 lacs loan to the accused; and

9) failure of the complainant to prove that the cheques in question had been issued by the accused to discharge legally enforceable debt or any other liability.

Learned Counsel petitioner has argued that respondents had admitted their liability in mediation proceedings and undertaken to pay the amount in question in four installments, but even then the complaint has been dismissed. However, I find that whatever is stated by the parties in the mediation proceedings, is to be kept confidential and it cannot be used as an evidence against any of the parties. Therefore, those proceedings cannot be taken into consideration to the prejudice of the accused. During the trial, the complainant was to prove his case by leading evidence and he cannot take advantage of the mediation proceedings to strengthen his case.

During the pendency of these proceedings, the complainant had moved an application under Section 311 Cr.P.C. read with 391 Cr.P.C. for leading additional evidence by way of documents Annexures A-1 and A-2, i.e. compromise/settlement deed dated 28.11.2014 and zimini order dated 28.11.2014. However, the complainant cannot possibly be allowed to fill up the gaps and loop holes in his case by moving an application before this Court, that too at a highly belated stage and in these proceedings.

Thus the impugned judgment does not call for any interference.

Finding no merit in the application the same stands dismissed.

(H.S. Madaan)
Judge

8.3.2018
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Whether speaking / reasoned Yes / No

Whether reportable Yes / No