

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-505-MA of 2015 (O&M)

Date of decision : 12.3.2018

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Pardeep Kumar

.....Applicant

vs.

Shiv Trading Co. and others

.....Respondents

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

Present: Mr. M.R. Rana, Advocate
for the applicant.

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H. S. Madaan, J.

Complainant Pardeep Kumar had brought a complaint under Sections 138 and 142 of the Negotiable Instruments Act, against accused Shiv Trading Company through its partner Balwinder Singh s/o Darshan Lal, r/o Gobind Dham Colony, Chanarthal Road, Kurukshetra, District Kurukshetra, as well as, other partners of the said firm namely, Balwinder Singh, Naresh Kumar and Jasbir Singh, on the allegations that there being friendly relations between the parties, the accused borrowed money from the complainant on various occasions for the purpose of increasing the business, total of such amount being Rs. 5 lacs and to discharge that liability, a cheque No. 832588 dated 15.12.2012 drawn on Canara Bank, Kurukshetra, in

the sum of Rs. 5 lacs was given to the complainant. The complainant presented that cheque with his banker Union Bank of India, Kurukshetra, for the purpose of encashment. However, it was informed vide memo dated 21.12.2012 of banker of the accused namely, Canara Bank, Kurukshetra, that the cheque could not be encashed as the account of the accused stood closed. Thereafter, the complainant served a legal notice dated 15.1.2013 to the accused calling upon such accused to make payment of the cheque amount within 15 days of the receipt of notice but to no effect. Thereafter the complaint was filed in the Court of Chief Judicial Magistrate, Kurukshetra.

After recording of preliminary evidence, the Chief Judicial Magistrate, Kurukshetra, summoned the accused to face trial, who put in a appearance. Subsequently, accused Balwinder Singh was discharged, leaving accused Jasbir Singh and Naresh Kumar, alongwith the company to face trial. Notice of accusation for offence under section 138 of the Negotiable Instruments Act was served upon the accused to which they pleaded not guilty and claimed trial.

The case was fixed for evidence of complainant,during the course of which complainant appeared as CW-1 and submitted his affidavit Exhibit CW-1/A, repeating on oath the assertions as given in the complaint tendering documents Exhibits C-1 to C-11. With that the evidence of complainant stood closed.

Statement of the accused was recorded under Section 313 Cr.P.C wherein all the incriminating circumstances appearing against the accused were put to him but he denied the same pleading

false implication. During the defence evidence, the accused examined Bhushan Kumar, Clerk as DW-1.

After hearing the arguments the trial Magistrate dismissed the complaint and acquitted the accused of the notice of accusation served upon him, which left the complainant aggrieved and he has approached this court by way of moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the said judgment.

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

A perusal of the impugned judgment goes to show that the trial Magistrate, while coming to the conclusion that the necessary ingredients of offence under Section 138 of the Negotiable Instruments Act, were not established, has given the following reasons:-

- 1) the cheque in question Exhibit C1 does not bear signatures of accused No. 3 and 4, rather it bears signatures of accused Balwinder Singh only, who had filled in the said cheque. Admission in that regard is there in the cross examination of complainant appearing as CW-1. The cheque was issued on 15.12.2012 whereas firm of the accused was closed in January, 2012, as admitted by the complainant while appearing as CW-1 in his cross examination. He has further conceded that no transaction had been done by the firm after January, 2012. That firm came into

being on 3.4.2010 when it did business only for one year. Thereafter it stood closed and that the cheque in question Exhibit C-1 had been given by Balwinder Singh on 15.12.2012;

2) there being no document on file to prove that any transaction between the complainant and accused had taken place and further complainant being unable to prove in whose presence he had made the payment. Further the complainant had not examined any person in whose presence the payment had allegedly been made;

3) Accused having examined Bhushan Kumar, Clerk, Canara Bank as DW-1, who had stated that account of the firm M/s Shiv Trading Company, New Grain Market, Shop No. 181-B was opened, which was closed on 4.6.2011 and before closing the account, the bank demanded the remaining cheques but was informed on 3.6.2011 that they were not having any cheque, thus showing that account of the firm was already closed on 4.6.2011, there being admission of complainant in that regard;

4) that Balwinder Singh who had signed the cheque and given it to the complainant was got discharged by the complainant by making a statement; and

5) Presumption under Section 139 of the Negotiable Instruments Act stood rebutted from the evidence

brought on file by the accused and admissions by complainant Pardeep Kumar in his cross examination while appearing as CW-1.

After hearing learned counsel for the applicant if find that the judgment passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein which might have called for interference by this Court. Thus no ground for grant of special leave to appeal to the complainant is made out. The application in that regard stands dismissed.

12.3.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No