IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.A-63-MA of 2017 (O&M)
Date of Decision: 03.07.2018

Mukesh

...Applicant (s)

Versus

Sunil

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Sant Lal Barwala, Advocate
for the applicant.
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HARI PAL VERMA, J (O&M).

This is an application filed under Section 378(4) CrPC seeking permission to grant leave to appeal against the judgment of acquittal dated 05.12.2016 passed by learned Judicial Magistrate Ist Class, Hisar, whereby the respondent-accused was acquitted in a complaint case filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act").

Briefly stated, the applicant-complainant filed a complaint with the averments that in order to discharge his legally enforceable debt/liability, the respondent-accused issued a cheque bearing No.471531 dated 18.06.2015 for an amount of Rs.5,00,000/- drawn on Punjab National Bank, Defence Colony, Hisar in favour of the applicant-complainant, with an assurance that the same will be honoured as and when presented in the bank. However, when the cheque was presented in the Sarva Haryana Gramin Bank, Arya Nagar, Hisar, where the applicant was maintaining his account, the same was dishonoured with the remarks "insufficient funds" vide bank return memo. dated 23.06.2015. Thereafter, the applicant sent a legal notice to the respondent on 07.07.2015, but as the he failed to make payment within the stipulated period of 15 days from the receipt of the legal notice and therefore, the instant complaint was filed.

In support of his complaint, the applicant himself appeared as PW-1 and tendered his affidavit PW-1/A and documents Ex.P1 to Ex.P4, which are original cheques, legal notice and postal receipt respectively.

However, the respondent-accused in his statement under Section 313 CrPC has submitted that the complaint is false and in support thereof, he has led defence evidence. He examined Harish Chautani as DW-1 in defence.

In order to sustain the liability, the trial Court formulated the following points:-

> *"(A) Whether the cheques in question were issued/drawn by the accused and ground of dishonour is covered under section 138 of the Act.*
>
> *(B) Whether the conditions provided in proviso a, b and c of section 138 of the Act read with section 142 of the Act, have been complied with.*
>
> *(C) Whether the accused issued the cheque in discharge of his legally enforceable debt or liability."*

It has been observed by the trial Court that the complainant has appeared in the witness box as PW-1 and tendered his affidavit Ex.PW-1/A in evidence, wherein he has reiterated the version as narrated in the complaint, but interestingly, neither in the complaint nor in the affidavit Ex.PW-1/A, date, month and year of advancement of loan has been mentioned by the applicant-complainant, though in the cross-examination, he has deposed that it is on 04.02.2015, he has handed over this amount to the respondent on credit.

Learned counsel for the applicant has argued that the applicant had brought all the relevant facts to the notice of the conducting counsel before the trial Court, however, due to some inadvertent mistake on his part, these facts could not be incorporated in the complaint and therefore, the complainant should not be deprived of his legitimate right to pursue his complaint. He has further submitted that though the date, month and year of advancement of loan could not been mentioned by the applicant-complainant in the complaint, but once it has been brought to the notice of the Court during the course of cross-examination that it is on 04.02.2015, he has handed over this amount to the respondent on credit, this fact should be taken as part of pleadings.

I have heard learned counsel for the applicant.

In order to succeed in the proceedings under Section 138 of the Act, the date, month and year of advance of loan are the basic averments which need to be incorporated in the complaint. In fact it is the foundation of the complaint and non-incorporation of these facts disentitle the applicant to succeed in the complaint under Section 138 of the Act. A person who has advanced such a huge amount of loan cannot forget to mention the date, month and year of advancement of the loan, even if the loan is friendly. Moreover, there is a specific defence raised on behalf of the respondent that the cheques in question have been misused and the same were not given to the applicant against any legally enforceable debt or liability. It is the pleaded case of the respondent that the cheques in question were snatched by the applicant along with other cheques, for which, the complainant has filed an application before the police on 20.07.2015 bearing No.4739-PU and this fact has duly been admitted by the applicant during his cross-examination.

In this view of the matter, no interference is warranted in the impugned order. Accordingly, finding no merit in the contention of the learned counsel for the applicant, the prayer made in the present application under Section 378 (4) Cr.P.C. for leave to appeal is declined.

The application is dismissed.

July 03, 2018 **(HARI PAL VERMA)**
AK **JUDGE**

Whether speaking / reasoned? Yes / No

Whether reportable? Yes / No