

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-917-MA-2017 (O&M)

Date of decision : 4.4.2018

...

M/s Kothari Finance

.....Appellant

vs.

Ramparshad

.....Respondent

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

Present: Mr. Sudhir Aggarwal, Advocate
for the applicant-appellant.

None for the respondent.

...

H. S. Madaan, J.

Complainant M/s Kothari Finance, revenue sharing partner with Shriram Transport Finance Company Ltd., Siwani, had brought a complaint under Section 138 of the Negotiable Instruments Act, against accused Ramparshad, on the allegations that in order to discharge his financial liability towards the complainant in part, the accused had issued a cheque bearing No. 508573 dated 5.12.2015 for a sum of Rs.68,703/- drawn on State Bank of Patiala, Branch Office Nekipur-Dhigawa, District Bhiwani, in favour of the complainant firm for crediting the amount in loan account of the accused.

However, on presentation, the cheque was dishonoured for the reason of insufficient funds in the account of the accused. On being informed, the complainant had served a statutory notice upon the accused calling upon such accused to make payment of the cheque amount within the stipulated period, but to no effect. As such the complainant had filed a criminal complaint under Section 138 of the Negotiable Instruments Act, against the accused.

After recording of preliminary evidence, the accused was summoned who put in appearance and was admitted to bail. Notice of accusation for offence under section 138 of the Negotiable Instruments Act was served upon the accused to which he pleaded not guilty and claimed trial. The accused was acquitted of the notice of accusation by Sub Divisional Judicial Magistrate, Siwani, vide order dated 9.3.2017. The reasoning so given by the Sub Divisional Judicial Magistrate, Siwani, is contained in paragraph 10 of the judgment, which for ready reference is reproduced as under:-

“10. From the perusal of the documents available on record, as well as from the arguments advanced by learned counsel for both the parties, it is a disputed regarding cheque No. 508573 dated 5.12.2016. However, during his cross-examination CW-1 Ramesh states that no cheques bearing serial number from 508570 to 508576 was issued by the accused but then he reiterates and states that accused had issued cheque No. 508573. According to the cross-examination of the witness, the loan

was disbursed to the accused on 9.4.2017 whereas according to the loan account statement of accused placed on record as Ex. C-5 and C-7, the loan was disbursed on 10.4.2017. Moreover, the witness talks about the agreement on the basis of which the interest rate on the loan is charged but not such agreement has been brought on record by the complainant. Moreover, the witness states about the Reserved Bank of India Rules regarding the rate of interest but the above-stated rules have also not been brought on record. In view of the above discussion, it can be said that the complainant has not been able to establish that whether the loan of Rs.1,60,000/- was disbursed to the accused on 9.7.2014 or 10.7.2014. Moreover, the agreement between the accused and complainant has not been brought on record which is the base of the alleged loan granted to the accused by complainant firm. In these circumstances, the benefit of doubt goes in favour of the accused. Therefore, finding force in the arguments of learned defence counsel, the accused is hereby acquitted of the charges leveled against him by extending benefit of doubt. His bail bonds and surety bonds stand discharged. Case property, if any, be dealt with, in accordance with law. File be consigned to records after due

compliance.”

The complainant has approached this Court seeking special leave to appeal, against the abovesaid judgment, notice of which was given to the respondent. The respondent had appeared through counsel on 2.11.2017. However, thereafter he did not put in appearance.

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

I find the judgment passed by Sub Divisional Judicial Magistrate, Siwani, to be well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. Thus no ground for grant of special leave to appeal to the complainant is made out. The application in that regard stands dismissed.

4.4.2018
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No