

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

CRM-M-19311 of 2018 (O&M)
Date of Decision:-.14.11.2018

Satya Devi

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Gian Chand Rattan, Advocate for the petitioner.

GURVINDER SINGH GILL, J.

By way of filing this petition, the petitioner assails judgment dated 13.4.2018 passed by the Court of Additional Sessions Judge, SAS Nagar Mohali whereby revision petition filed by complainant/petitioner Satya Devi against order dated 20.7.2016 passed by Additional Chief Judicial Magistrate, Mohali dismissing the complaint filed by petitioner/complainant Satya Devi, has been dismissed.

A few facts necessary to notice for disposal of this petition are that petitioner had filed an application under Section 156(3) Cr.P.C. before Illaqa Magistrate, SAS Nagar Mohali seeking issuance of directions for registration of a case under Section 406, 420, 506 read with Section 120 of IPC against Baby, Bindu and Nirmala Devi. The prayer for registration of FIR was declined and the petitioner was directed to lead preliminary evidence in support of her allegations levelled in the complaint.

The complainant had alleged that on 5.5.2011, the accused Baby, Bindu and Nirmala Devi had approached her for advancing a loan of

₹ 1 lac which was advanced by the complainant and writings dated 5.5.2011 and 5.4.2012 were executed wherein it was stipulated that the accused shall repay the loan along with interest @ Rs. 6,000/- per month payable on 30th of every month. The complainant alleged that despite a period of 3 years and 11 months having elapsed, the accused had neither returned the principal amount nor had ever paid any amount towards interest and had thus defrauded the complainant.

The complainant Satya Devi herself stepped into the witness box as CW-1 and also examined her husband Gian Chand as CW-2 who both stated to the effect that the accused had approached them for advancement of loan and that an amount of ₹ 1 lac had been advanced by the complainant to the accused and writings had been executed to the effect that the accused shall repay the amount along with interest @ ₹ 6,000/- per month. The learned trial Court vide order dated 20th July, 2016, however, held that no ground was made out for summoning the accused and consequently dismissed the complaint.

Aggrieved with the aforesaid order dated 20th July, 2016, the complainant preferred a revision petition in the Court of Sessions, SAS Nagar Mohali which was also dismissed vide order dated 13.4.2018 which has been impugned by way of filing this petition.

The learned counsel for the petitioner, while assailing the impugned order has submitted that the Courts below fell in error in not appreciating the facts in the correct perspective and overlooked the fact that the accused had deceived the complainant and had made her part with an amount of ₹ 1 lac by holding out a false representation that they would repay the same with a hefty interest of ₹ 6,000/- per month whereas in fact the

accused never intended either to repay the principal amount or to pay any amount towards interest. The learned counsel for the petitioner in this context has drawn the attention of this Court to the statement of CW-1 Satya Devi (Annexure P-1) and of PW-2 Gian Chand (Annexure P-2) wherein they have stated that the accused had induced the complainant into parting with an amount of ₹ 1 lac and had, thus, defrauded the complainant. The learned counsel for the petitioner has further submitted that the writings executed by the accused i.e. writing dated 5.5.2011 and 5.4.2012 would clearly establish that the accused had received the amount in question and that in these circumstances, the accused ought to have been summoned and that there was no room for dismissal of the complaint.

I have considered the aforesaid submissions raised on behalf of the petitioner.

A perusal of the complaint and the documents annexed with this petition reveal that it is in fact a case simpliciter of advancement of loan of ₹ 1 lac. Though, the complainant CW-1 Satya Devi and CW-2 Gian Chand, while in the witness box, have stated that the accused had induced the complainant to part with an amount of ₹ 1 lac but there is no such evidence to show that when the loan was advanced, the accused never intended to repay the amount or that right from day one, the intention was to cheat the complainant. In this regard, it needs to be mentioned that in fact the complainant had also filed a civil suit wherein a preliminary issue regarding limitation was framed which was decided in favour of the complainant holding therein that the suit was within limitation. However, the said order was challenged by the accused by way of filing a Civil Revision No. 6463 of 2016 wherein the aforesaid order of trial Court was set aside and suit of the

petitioner was dismissed being barred by limitation. The learned counsel for petitioner has, however, submitted that SLP has been filed in Hon'ble Supreme Court against order of High Court. The present complaint was filed in the year 2015 i.e. after about 4 years of advancement of loan. It remains unexplained as to why despite the accused not having paid any amount towards interest, the complainant chose to remain silent all these years. In any case, in the absence of any evidence to show that the accused had taken the loan from the complainant in order to cheat her, this Court is of the opinion that it is a case of a default in payment of a loan simpliciter and no criminal liability would be attracted.

I do not find any infirmity in the impugned order and the same is upheld. There is no merit in this revision petition and the same is hereby dismissed.

(GURVINDER SINGH GILL)
JUDGE

14.11.2018
kamal

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No