IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-998-MA-2012 (O&M)
Date of decision:25.01.2019

Indusind Bank Ltd.

.....Applicant

versus

Jogi Ram

....Respondent

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Ashwani Talwar, Advocate for the applicant.

Mr. Arjun Lakhanpal, Advocate for the respondent.

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Kuldip Singh, J. (Oral)

This order shall dispose of the application filed under Section 378 (4) of the Code of Criminal Procedure for grant of Special Leave to Appeal against the impugned judgment dated 23.10.2012 passed by the learned Judicial Magistrate Ist Class, Rohtak vide which Criminal Complaint No.120 of 2009/2012, filed under Section 138 of Negotiable Instrument Act by the applicant, was dismissed.

I have heard learned counsel for the parties.

In this case, the bank claimed that it advanced a loan of Rs.4,45,000/- to one Randhir Singh. Accused/respondent-Jogi Ram stood as guarantor. In order to discharge his liability, he issued a cheque bearing No.168701 dated 31.03.2009 drawn on Punjab National Bank, Narwana, District Jind. The cheque was dishonored with the remarks "insufficient funds". The learned Magistrate after the trial came to the conclusion that liability of the petitioner is not proved. The learned Magistrate observed that the principle liability was that of Randhir Singh loanee. He also referred to the clause 9.2 to 9.4 of the loan agreement, in which, the principle liability was of the loanee and after his default, the liability of guarantor would arise. The Court also observed that column for details of guarantor lies blank. The trial Court took a view that accused also availed a loan from the complainant/bank, therefore, the plea of the accused that the cheque issued by him for his loan was misused, cannot be refuted. Admittedly, as per the loan agreement accused/respondent signed as guarantor on several papers. Therefore, even if, the details of account is not mentioned in the column, it is hardly irrelevant. However, document D1/D2 shows that respondent had taken a loan from the petitioner-bank on 22.07.2005. The present loan to Randhir Singh was advanced on 17.08.2005. The trial Court has taken a view that the blank cheque issued by the petitioner in his own loan account might have been misused.

I am of the view that the trial court has took one of the possible views. Therefore, while hearing appeal against acquittal, this Court cannot replace the said view with its own views. Further, it comes out that the matter also went for arbitration. As per Arbitration Award dated 28.07.2009 (Annexure A4), it comes out that arbitrator had issued a notice to the principle loanee as well as the present respondent-guarantor on 26.02.2009. They were proceeded against ex-parte in the said case. However, the present cheque is of 31.03.2009 when the arbitration proceedings were pending before the Arbitrator. When the present applicant led the ex-parte evidence it was no where claimed that the cheque has been issued by the guarantor and has been dishonored by the bank. It being so, the trial Court has taken one of the two possible views and this Court while exercising the powers in appeal against acquittal cannot substitute its views with the view taken by learned Magistrate.

Hence, there is no ground to grant leave to appeal and the same is dismissed.

(KULDIP SINGH)
JUDGE

25.01.2019
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Whether speaking/ reasoned: Yes
Whether Reportable: No