

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-389-MA-2013
Date of Decision: 01.11.2019

Dr. Gurmit Singh

.....Applicant

Versus

Balwinder Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Vivek K. Thakur, Advocate,
for the applicant.

Mr. Ramesh Sharma, Advocate,
for the respondent.

Harnaresh Singh Gill, J.

The applicant-complainant has filed the present application under Section 378(4) of the Code of Criminal Procedure (for brevity, 'Cr.P.C.') for grant of leave to appeal against the judgment dated 17.05.2012 passed by the learned Special Judicial Magistrate Ist Class, Kapurthala.

Vide impugned judgment, the trial Court acquitted respondent-accused, Balwinder Singh of the charge under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I.Act').

Respondent-accused Balwinder Singh stood summoned for the aforesaid offence, in a complaint filed by applicant-complainant, Dr. Gurmit Singh alleging that the respondent had taken a loan of Rs.5 lakh from the applicant in order to discharge his legal liability arising out of issuance of a cheque dated 13.08.2007 for the said amount in favour of the

applicant. At the time of the issuance of the cheque, the applicant had been assured by the respondent that once presented, the cheque shall get encashed. However, when the applicant had presented the cheque for encashment with his banker, the same was returned un-encashed with the remarks "Funds Insufficient". Thereupon, the complainant-applicant got a legal notice issued to the respondent calling upon him to make the requisite payment, but to no avail. Hence, the applicant-complainant had filed the complaint.

On the basis of preliminary evidence led by the applicant, the respondent was summoned under Section 138 of the N.I.Act, who had surrendered before the trial Court on 05.11.2008 and was later admitted to bail. On 11.11.2008, notice under Section 138 of the N.I.Act was served upon the respondent to which he pleaded not guilty.

The court below while dismissing the complaint and acquitting of the respondent, had considered the statements of witnesses and documents on record. As per the respondent, his Aunt (Maami) Bhajan Kaur, widow of Tarlok had resided with him and later she had developed illicit relations with the applicant, which was objected to by the respondent, and when all the relatives had tried to make her understand, she ran away from UP with the applicant and took away some articles including his cheque book. Later, the applicant in connivance with said Bhajan Kaur, had forged his signatures on the cheque in question and filed the false complaint and when the

respondent had come to know about the act of Bhajan Kaur, he had filed a case in the Court of learned Civil Judge (Sr. Divn.), Puwayana, District Shahjahanpur, and after the inquiry under Section 156(3) Cr.P.C., an FIR had been registered against the applicant. Thus, the story of taking loan from the applicant is false.

After dismissing of complaint, the present application under Section 378(4) Cr.P.C. has been filed and this is how this case is before this Court.

I have heard learned counsel for the applicant as well as learned counsel for the respondent and with their able assistance, I have gone through the record of the case.

Learned counsel for the applicant has argued that the respondent had taken a loan of Rs.5 lakh from the applicant and to discharge his legal liability, the respondent had issued a cheque (Ex.C-1), which had got dishonoured due to "Insufficient Funds". Thereafter, legal notice Ex.C 4/A had been issued to the respondent to make the payment and when the payment had not been made, the complaint had been filed. He further argued that the respondent had neither stepped into the witness-box nor produced any evidence. Rather CW 3 Sanat Kumar Wadhwa, Senior Manager, Indian Bank, Shahjahanpur (UP) had proved the cheque in question and admitted the signatures of the respondent upon it.

Per contra, learned counsel for the respondent has argued that it was the Aunt (Mami) of the respondent, who had

stolen the cheque book alongwith other articles and on the directions of the court at Puwayana, District Shahjahanpur, after conducting inquiry under Section 156(3) Cr.P.C. an FIR had been registered against the applicant and certified copies of the documents, including FIR No.147/2009, inquiry report from the Court of Puwayana, through the District & Sessions Judge, District Shahjahanpur, were endorsed to the trial Court by learned Civil Judge (Jr. Divn.), Puwayana through learned District & Sessions Judge, Kapurthala.

It is a case in which the applicant had admitted the factum of Bhajan Kaur @ Gurmit Kaur being real Aunt (Maami) of the respondent. The husband of Bhajan Kaur died in the year 1976. The applicant had married her after divorcing his earlier wife in the year 1987. Thus, the plea taken by the respondent in his statement under Section 313 Cr.P.C. stands proved.

Even no date in the complaint or in legal notice has been mentioned in respect of giving cheque to the applicant by the respondent and moreover, a person who has strained relations with another person, cannot give cheque to him. In the case in hand, the relations between the applicant and respondent were strained so it is plausible to believe that cheque was given by the respondent as it is an admitted fact that various cases were pending between the applicant and respondent.

After considering all the facts and circumstances, I have come to the conclusion that the judgment passed by the

CRM-A-389-MA-2013

trial Court is based on proper appreciation of evidence. Therefore, the judgment dated 17.05.2012 passed by the learned Special Judicial Magistrate Ist Class, Kapurthala, is upheld. The application under Section 378(4) Cr.P.C. seeking grant of leave to appeal, is dismissed. Leave to appeal is declined.

(HARNARESH SINGH GILL)
JUDGE

01.11.2019
parveen kumar

Whether Speaking/ Reasoned:	Yes/ No
Whether Reportable:	Yes/ No