IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-A-1664-MA-2018 (O&M)
Date of decision: 04.04.2019

Sushil Kumar ...... **Appellant**

Versus

State of Haryana and another ...... **Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. D.S. Virk, Advocate
for the appellant.

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ANIL KSHETARPAL, J. (ORAL)

CRM -29027-2018

Application is allowed and the delay in filing the appeal is condoned.

Main Case

Prayer in the application is to grant of leave to appeal under Section 378(4) of the Code of Criminal Procedure.

Learned trial Court has passed a judgment after appreciating the evidence and recorded as under:-

> *"Apparently, there are certain infirmities/shortfalls in the case of the complainant, which gives strength to the arguments led by the ld. defence counsel. As per complainant's version he gave the wood of Rs.84,000/- to the accused on credit basis but strangely complainant has not mentioned the date of said transaction. Moreover, complainant has also not mentioned the date when the accused has issued him the cheque in*

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question in discharge of this legal liability. Moreover, in his cross-examination complainant stated that his Saw Mill is not registered under Sales Tax Act nor he has any PAN Card or TAN Card regarding the same. He although started that he has got the license from the Government but he also failed to produce said license before the Court. He further stated that he has not issued any receipt/bill regarding the purchase of wood by the accused nor he has placed on record any record/proof regarding the purchase of wood by the accused. He also started that the has no register/Bahi having entry regarding sale/purchase of wood by the accused. Moreover, complainant has not mentioned in the complaint that after dishonouring of cheque in question he personally met with the accused and asked him for the payment of cheque amount. Although, there is no legal retirement of personally visiting with the accused before filing complaint, but this fact raises suspicion about the version of complainant regarding his business relation with the accused because usually person having friendly business relation with the accused in such situation is expected to persuade the accused for repayment by way of personally meeting with him, not to straight away send legal notice to the accused and file complaint against accused. Moreover, admittedly complainant has not placed on record his income tax return showing the sale transaction therein. Moreover, in his reply (Mark P-1) to the accused has also denied his liability to the cheque amount to the complaint. In such circumstances, complainant's giving wood to the accused on credit basis and accused issuing of cheque in question of Rs.84,000/- to the complainant, as payment of said wood, appears to be quite doubtful and thus the legal liability of the accused to pay the amount of cheque in question does not arise, which is quite essential to make the accused liable for the offence punishable under Section138 of the Negotiable Instruments Act, 1881."

Learned counsel for the appellant made sincere effort,

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however, could not draw attention of the Court to any perversity or substantive misreading of evidence.

Hence, the appeal is dismissed.

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned Yes / No

Whether Reportable Yes / No

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