

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1093-MA-2017

Date of decision: 31.01.2019

Manchanda Agencies

..... Applicant

Versus

Sanmeet Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Rahul Vats, Advocate for the applicant.

RAMENDRA JAIN, J. (ORAL)

As per office report dated 08.12.2018, respondent was duly served, but none has represented him till date.

Through this application under Section 378(4) Cr.P.C., prayer has been made for grant of leave to file accompanying appeal against the judgment of the trial Court dated 10.03.2017, whereby respondent was acquitted, while dismissing the complaint of the applicant under Section 138 of the Negotiable Instruments Act, 1881 (for short-'the Act').

In nutshell, applicant filed a complaint under Section 138 of the Act, against the respondent for bouncing of his cheque of ₹ 37,000/-. The trial Court after holding trial, dismissed the complaint of the applicant, vide judgment impugned herein.

Learned counsel for the applicant *inter alia* contends that the trial court has erred in dismissing the complaint on the following grounds:-

(i) The applicant did not prove any sales tax or income

tax returns showing that the cheque in question was issued by the respondent against some business transaction, ignoring the fact that respondent in his cross-examination had admitted business transactions claimed by the applicant against him.

- (ii) The applicant did not produce any document in support of his assertion that he was proprietor of complainant-firm, therefore, he has no *locus standi* to file instant complaint, though VAT Invoices were produced by the applicant in support of his above assertion.

Having given thoughtful consideration to the submissions made by learned counsel for the applicant, this Court finds merit acceptance of this application and the accompanying appeal, for the reasons to follow:

Section 139 of the Act, speaks about drawing of presumption in favour of the holder of the cheque. Therefore, the trial Court was outrightly required to draw presumption in favour of the applicant being holder of the cheque in question, as the same was never rebutted.

The applicant had produced VAT Invoice dated 08.12.2012, Ex. C-6, wherein Pran Nath Manchanda, was shown as proprietor of the complainant-firm. The trial Court has illegally discarded the same on the ground that the same was a duplicate copy of the computer generated invoice, despite the fact that the respondent except simple denial did not lead any evidence in the shape of documentary or other to rebut the same. Even otherwise, computer generated invoice does not bear the signatures of the author.

The respondent-accused took the plea in his defence that he

had issued cheque in question in good faith which is not believable and is improbable, in view of the fact that no one would issue a signed cheque in favour of another person, unless and until there is some transaction of any kind in between them. The above plea of the respondent-accused on the face of it seems to be concocted and false.

There is no requirement of law to produce income tax or sales tax returns. Simple legal requirement for complainant is to satisfy the Court that the cheque in question was issued by the accused to discharge his legal liability. In the instant case, respondent did not deny his signatures on the cheque in question and that the same pertains to his bank account. Therefore, the trial Court was bound to draw presumption in favour of the applicant, under Section 139 of the Act, as discussed above.

In view of the discussion made above, leave to appeal is granted after hearing counsel for the applicant. Registry is directed to assign number to this appeal. Impugned judgment of the trial Court dated 10.03.2017, is set aside. Respondent is held guilty for commission of offence under Section 138 of the Act. Matter is referred back to the trial Court to afford an opportunity of hearing to the respondent on the quantum of sentence.

Disposed of.

January 31, 2019
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No