IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-2137-MA-2018
Date of Decision: 21.11.2019

H.D.F.C. Bank Ltd. .......Applicant

Versus

Shivraj Singh .....Respondent

**CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Saurabh Bhardwaj, Advocate, for the applicant.

**HARNARESH SINGH GILL, J.**

The complainant (applicant herein) has filed the present application under Section 378(4) Cr.P.C. for grant of special leave to appeal against the judgment dated 23.05.2018 vide which complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short `the Act') has been dismissed and the respondent has been acquitted of the charge framed against him.

As per the applicant-bank, the accused was granted cash credit limit of Rs.8,00,000/- and term loan of Rs.2,70,000/-; that the accused in order to discharge the said liability had issued cheque No.000004-151240603:01132-31 dated 12.09.2016 for an amount of Rs.8,00,000/- drawn on HDFC Bank, Boha in KGC account in favour of the complainant-Bank; that when the said cheque was presented for encashment, the same got dishonoured and that despite issuance of a legal notice dated 6.10.2016, the payment was not made by the accused-respondent.

After recording of the preliminary evidence, the respondent was summoned to face the trial and pursuant to the notice of accusation, the respondent pleaded not guilty and claimed trial.

The Trial Court while acquitting the respondent has, on the basis of the evidence on record, drawn a conclusion that the cheque in question was taken by the bank at the time of advancing the loan to the respondent-accused; that the bank instead of filing a suit for recovery of the loan amount, had adopted a short cut method or coercive method to recover the loan amount and that once the account out of which the cheque was issued, was being maintained by the respondent with the complainant-bank, it could not be expected that the complainant-bank was not aware of the funds lying in the said account. The trial Court concluded to the following effect:-

> "….From the cross-examination of this witness, it can easily be inferred that status of the account of accused was already with the complainant bank because the alleged cheque which is dishonoured is of the same bank. So, the complkainant bank could have checked the balance in the account of accused when it was presented by the accused to the complainant bank. So, the version of the complainant is not believable that the said cheque was issued by the accused with assurance that there

are sufficient funds in his account to honour the cheque. No loan document is placed or proved on record and no statement of account after 01.10.2017 is placed or proved on record and the witness of the complainant bank could not reply the question satisfactorily that what outstanding amount is against the accused till date. So, I am of the considered view that complainant failed to prove that the accused issued the cheque to discharge his legal liability. So, the present complaint is dismissed and the accused is ordered to be acquitted of the notice served upon him.......”

I have heard the learned counsel for the applicant and gone through the impugned judgment of acquittal.

Learned counsel appearing for the applicant has vehemently contended that once the cheque in question stood issued in favour of the applicant-Bank, then as per the provisions of the Act, the presumption is that the same was issued for consideration. However, while passing the impugned order, the learned trial Court has totally brushed aside this settled legal position.

However, I do not find any merit in the said argument of the learned counsel for the applicant.

Admittedly, the applicant-Bank had advanced loan of Rs.8,00,000/- lacs to the respondent. Further, admitted is the position that the alleged cheque was issued of/from the bank account, which was being maintained with the applicant-Bank. It does not appeal to the common prudence as to how the applicant had been advanced the loan, when the applicant-Bank was aware of the transactions and the entries of debit and credit in the said bank account of the respondent. Thus, the learned trial Court has rightly held that the applicant-Bank has a right to file a suit for recovery and not to initiate the proceedings under Section 138 of the Act.

No other point has been raised.

In view of the above, finding no merit in the present application, the same is dismissed. Special leave to appeal is declined.

**(HARNARESH SINGH GILL)**
**JUDGE**

21.11.2019
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Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No