IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-208-MA-2016 (O & M)
Date of Decision:19.11.2019

Vinod Kumar

... Applicant

Versus

Sandeep Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Ashish Gupta, Advocate,
for the applicant.

HARNARESH SINGH GILL, J.

CRM No.4119 of 2016

The present application under Section 5 read with Section 14 of the Limitation Act has been filed by applicant, Vinod Kumar for condonation of delay of 307 days in filing the application seeking special leave to appeal.

It has been pointed out by the learned counsel for the applicant that under *bonafide* impression, the appeal was filed in the Court of Sessions at Sri Muktsar Sahib, on 13.03.2015, which was later on declared not maintainable in view of the Full Bench decision of this Court in ***M/s Tata Steel Ltd. vs. M/s Atma Tube 2013 (2) RCR (Criminal) 1005*** and was dismissed by the learned Additional Sessions Judge, Sri Muktsar Sahib, on 17.11.2015. The contents of the present application are supported by an affidavit.

Keeping in view the above facts and the law on the subject that rather denying hearing on technicalities, the case be heard on merits, the present application is allowed and the delay of 307 days in filing the application seeking leave to appeal, is condoned.

CRM-A-208-MA of 2016

Applicant has filed the present application under Section 378(4) of the Code of Criminal Procedure seeking special leave to file appeal against the judgment dated 23.01.2015 passed by the learned Additional Chief Judicial Magistrate, Sri Muktsar Sahib, vide which the respondent-accused has been acquitted of the notice of accusation served upon him in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I.Act').

The case set up by the applicant in the complaint was that the respondent had taken a friendly cash loan of Rs.2 lakh and in order to discharge his legal liability, the respondent had issued cheque bearing No.088403 dated 02.03.2013, amounting to Rs.2 lakh, but the said cheque was got dishonoured due to 'insufficient funds'. A legal notice was issued to the respondent to make the payment, but to no avail.

The following point had been carved out by the trial for determination:

> *"Whether on 2.3.2013, the accused Sandeep Singh in discharge of his legal liability issued cheque bearing No.0088403 for a sum of Rs.2 lacs in favour of complainant and on presentation, the said cheque was dishonoured on account of "insufficient funds". After that, complainant served a registered legal notice on 29.03.2013 upon him, but he failed to make the payment of cheque in dispute and thereby the accused committed the offence punishable under Section 138 of the Act."*

While considering the arguments raised by the respondent's counsel that no specific date, month or year had been given by the applicant as to when the loan of Rs.2 lakh was advanced nor any record had been placed on record to show that the loan was advanced, nor the source regarding withdrawal of Rs.2 lakh on 5.7.2011, the learned trial Court dismissed the complaint on 23.01.2015.

Aggrieved of the judgment dated 23.01.2015 passed by the learned Additional Chief Judicial Magistrate, Sri Muktsar Sahib, the present application seeking leave to appeal has been filed.

I have heard learned counsel for the applicant and with his able assistance, have gone through the record.

Learned counsel for the applicant has argued that the applicant had advanced the loan of Rs.2 lakh to the respondent, which was a friendly loan and no document for extending the loan was executed keeping in view the relationship between the parties. The amount had been withdrawn from the State Bank of Patiala and there was specific entry to withdraw the said amount in the passbook Ex.C7.

Learned counsel has further argued that the applicant had retired from the Punjab State Electricity Board as an Engineer and had been drawing handsome pension, which is his source of income. If there is violation of Section 269-SS of Income Tax Act, it does not mean that the respondent could be discharged of the liability. When the payment was made through cheque, then it was not necessary to reflect the amount in income tax returns.

The trial Court while dealing with the complaint of the applicant, has drawn its conclusion in para Nos.27, 28 and 29 which read as under:-

> *"27. Besides it, the complainant has failed to explain the source of above stated amount of Rs.2 lacs, which he allegedly advanced to the accused. Though, he has stated in his cross-examination that he has withdrawn the above stated amount from his bank. He has also produced on record the passbook of his bank account with SBOP, which is Ex.C7 on record. Vide the above stated pass-book, he has withdrawn Rs.2 lacs on 05.07.2011 from his account with SBOP. But the ld.counsel for the complainant has failed to explain how the above stated withdrawal of above stated amount of Rs.2 lacs by the complainant on 5.07.2011 is connected with present case.*
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> *28. Undoubtedly, the complainant has neither mentioned in his complaint nor notice when he has advanced the amount of Rs.2 lacs to the accused. In his cross-examination dated 9.5.2014, he has stated that he has given the above stated amount to the accused about 2½ years ago i.e. approximately December, 2011. It is not plausible that complainant withdraws the huge amount of Rs2 lacs on 5.7.2011 and kept it in his house and then advanced it to the accused in the month of December, 2011 when he demanded it. He has also stated that he has given the amount to the accused in the bank after withdrawing it from the bank. But there is no withdrawal of any amount by the complainant in the last quarter of year 2011. So, it cannot be presumed that the complainant has given the above stated amount to accused after withdrawing it from the bank. So, this court is of considered opinion that the complainant has failed to disclose the source of huge amount of Rs.2 lacs. It has also come in the evidence of the complainant that he is retired*

PSEB Engineer and he is taking pension from the government. Even entries regarding receipt of pension amount has been made in his passbook which is Ex.C7 on record. A person who is retired and receiving pension from the government would never lend huge amount of Rs.2 lacs to anyone without getting executed any document regarding it and without interest.

29. Besides it, complainant has stated that he has made the cash payment of Rs.2,00,000/- to the accused, which is not legal as per Section 269-SS of Income Tax Act, but in the case in hand the alleged payment of Rs.2 lakh was advanced as loan by the complainant without any account payee cheque and the same was given in cash, which further makes the case of complainant highly doubtful."

To my mind, non-mentioning of the date, month and year of advancement of loan and keeping with him the huge amount of Rs.2 lakh for 2½ years before extending the loan to the respondent especially when the applicant is a retired employee, the complaint has been rightly dismissed and it is settled law that presumption raised in favour of the applicant (holder of cheque) must be kept confined to Section 138 of the N.I.Act. Thus, the applicant has failed to prove that the cheque Ex.C1 had been issued in discharge of any legal liability.

From the above, I do not find any ground to grant special leave to file appeal. Therefore, finding no merit in the present application, the same is dismissed. Special leave to appeal is declined.

19.11.2019 **(HARNARESH SINGH GILL)**
parveen kumar **JUDGE**

Note: Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No