

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CRM-A-408-MA-2016 (O&M)
Date of decision : 13.12.2019

Suresh Chand ...Applicant/appellant

Versus

Tilak Raj ...Respondent

2. CRM-A-700-MA-2016 (O&M)
Date of decision : 13.12.2019

Suresh Chand ...Applicant/appellant

Versus

Tilak Raj ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akashdeep Singh, Advocate for the applicant/appellant.

Mr. Amit Kohar, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

By this common order, two applications for grant of leave to appeal bearing CRM-A-408-MA-2016 and CRM-A-700-MA-2016 shall stand disposed of as the learned trial Court has decided both the complaints filed between the same parties, by a common judgment.

Leave to appeal has been sought against the judgment of acquittal passed by the learned Judicial Magistrate Ist Class, Rohtak, while dismissing the complaints filed under Section 138 of the Negotiable Instruments Act on dishonour of the cheque.

Learned Judicial Magistrate has found that from the documents produced by the defence that the initial presumption under Section 139 of the

Negotiable Instruments Act stands rebutted on the preponderance of evidence and thereafter the appellant-complainant has failed to prove its case beyond the shadow of reasonable doubt.

It is the case of the appellant that he had given a friendly loan of ₹4,00,000/- to the respondent-Tilak Raj and for repayment thereof, two cheques of ₹2,00,000/- each were issued by the respondent-accused. It is undisputed that there is no document of the alleged friendly loan. The complainant has failed to prove any special relationship to prove that he advanced the sum as averred without executing any document. Accused-respondent was only a marginal witness of the agreement to sell executed between Anil Aggarwal and the appellant. There is no evidence of amount of ₹4,00,000/- in cash was paid to the accused.

Learned Judicial Magistrate, on appreciation of evidence, has recorded the finding. Such finding is not shown to be suffering from substantive error or perversity. The jurisdiction of the Appellate Court while hearing the leave to appeal is limited. The Appellate Court can interfere only if the conclusion drawn by the Judicial Magistrate suffers from any substantive error or perversity. In absence thereof, there is no ground to interfere.

Accordingly, both the applications for grant of leave to appeal are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid order.

13.12.2019

Pawan

(ANIL KSHETARPAL)
JUDGE

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