

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-590-MA-2018
Date of Decision: 20.11.2019

Paramjit Singh Dhillon

.....Applicant

Versus

Arun Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sandeep Arora, 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 23.08.2017 passed by the learned Judicial Magistrate, Ist Class, Jalandhar, whereby the complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'), was dismissed and the accused was acquitted.

As per the case of the applicant, mother of the respondent/accused, namely, Surinder Kaur had approached Gurkirpal Singh @ Gurdial Singh through applicant-Paramjit Singh Dhillon for purchase of the land measuring 4 kanal 5 marla and in order to discharge her legal debt/liability on behalf of his mother Surinder Kaur, the respondent-accused had issued cheque no. 115676 dated 30.11.2013 and cheque No.

115677 dated 30.11.2014 in the name of the applicant-complainant, being attorney of Gurkripal Singh @ Gurdial Singh. Accordingly, cheque No. 115676 dated 30.11.2013 was presented for encashment, but the same got dishonoured and the matter was reported to the police, whereupon the respondent/accused gave assurance that if the cheque is presented again, it will be honoured. However, again when cheque No. 115677 dated 30.11.2014 was dishonoured on 19.12.2014 with the remarks "insufficient funds". Thereafter, a legal notice was issued to the respondent-accused, but despite the service of said notice, the accused-respondent had failed to pay the cheque amount.

After recording the preliminary evidence, the respondent-accused was summoned to stand trial under Section 138 of the Act. After service of the notice of accusation, his statement under Section 313 Cr.P.C. was recorded, wherein he denied the incriminating material against him and claimed the trial. It was stated that the cheques were issued as security amount on behalf of the mother of the respondent-accused for purchase of land measuring 4 kanal 5 marla and that with the execution of the sale deed on 27.11.2012 by Gurkripal Singh @ Gurdial Singh, the cheque had been rendered infructuous as Gurkirpal Singh had received the entire sale consideration amount from Surinder Kaur, mother of the respondent-accused and mutation had also been sanctioned.

The learned trial Court on the basis of the evidence on record, acquitted the accused of the charge framed against

holding that the complainant had failed to prove any legal liability against the accused-respondent.

I have heard the learned counsel for the applicant and I am of view that the present application being bereft of any merit, is liable to be dismissed.

The learned trial Court, carved out the following two points for determination:-

- “1. Whether the accused in discharge of legally and enforceable liability issued cheque bearing No. 115677 dated 30.11.2014 for a sum of Rs.19,00,000/- to discharge the legal financial liability towards the complainant?
2. Whether the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act?

There is no dispute regarding the signatures on the cheque and as per the respondent/accused, the cheques had been misused by the complainant.

It has rightly been held by the trial Court that once the cheque stands issued, there is a statutory presumption regarding legally enforceable liability. However, such presumption is rebuttal and that once the accused-respondent is able to rebut such presumption, which of course, should be beyond the reasonable doubt, the complaint is liable to be dismissed.

Still further, to my mind, the sale deed was executed on 27.11.2012; the present case was filed on 19.01.2015 whereas the cheques in questions were issued on 30.11.2013 and 30.11.2014. Any person, who is selling his land will take

sale consideration at the time of execution of the sale deed, which in the present case took place on 27.11.2012. Moreover, there is admission on the part of the complainant that the sale deed Ex.D4 was already executed on 27.11.2011 and nothing was due with regard to the sale deed.

Yet further, complainant Paramjit Singh Dhillon is the attorney of Gurkirpal Singh. However, the original power of attorney of Gurkirpal Singh was not placed on record of the lower Court.

In my considered opinion, the learned trial Court has based its finding on the basis of the entire evidence on record and appreciated the same in right perspective so as to hold that the complainant had failed to prove his case against the respondent.

It could not be pointed out that the learned trial Court has misread or misinterpreted the evidence while passing the impugned judgment. Still further, I do not find any perversity or illegality in the impugned judgment, which may warrant interference by this Court in the present application.

In view of the above, the present application is dismissed. Leave to appeal is declined.

(HARNARESH SINGH GILL)
JUDGE

20.11.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No