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

CRM-A-751-MA-2018 (O&M)
Date of Decision:29.05.2019

M/s Vishal Trading Company (HUF) through its proprietor

...Appellant

Versus

Darshan Singh

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Gaurav Arora, Advocate for the appellant.

ANIL KSHETARPAL, J.

CRM-14516-2018

For the reasons stated in the application, which is supported by an affidavit, delay of 6 days in filing the appeal is condoned.

CRM stands disposed of.

Main case

Leave to appeal under Section 378(4) of the Code of Criminal Procedure has been sought against the judgment of acquittal dated 29.08.2017 passed by learned Judicial Magistrate 1st Class, Karnal.

This Court has heard learned counsel for the appellant at length and with his able assistance gone through the judgment passed by the learned trial court, ordering acquittal.

Appellant-Firm filed a complaint under Section 138 of the Negotiable Instrument Act, 1881 against the accused on the ground that a cheque of Rs.3,78,345/- drawn on Punjab National Bank, Nigdhu, District Karnal, issued by the accused in discharge of his legal liability, stood dishonoured on presentation and after notice, which was responded to, the accused has not paid the amount.

From the reading of judgment, it is apparent that accused is a farmer and the complainant is a commission agent. There were various transactions between the parties and complainant claims that the cheque was issued in discharge of recoverable debt.

Learned Judicial Magistrate has held that the complainant has duly admitted last transaction but denied two transactions which are for amounts of Rs.15,000 and Rs.1,04,624.90/-. The Court has held that unilateral documents prepared by the complainant do not prove that the cheque was issued in discharge of liability. Still further, the accused has examined three witnesses. DW1-Sanjay Katyal, a bank official, has proved the bank account statement of the accused. Apart from that DW-2 Parveen, a Accounts Clerk previously working with the complainant-Commission Agent Firm in the years 2013 and 2014, has also been examined. Sanjay Kumar, who was at the relevant time working as a Accounts Clerk with the complainant-Firm, has also been examined as DW-3. It has been proved from the statements of aforesaid witnesses that cheque No.513428 amounting to Rs.60,000/- and cheque No.513429 amounting to Rs.1,90,000/- have been withdrawn by the complainant through DW-2 and DW-3. Still further, the Court has found that the farmer-accused had sold his crop worth Rs.4,58,331.63/- which fact is admitted by the complainant and the amount earned from the sale of the crop has not been explained. It has also not come in evidence that how the alleged cheque amount was worked out as due and payable.

In a criminal case, prosecution is required to prove the case beyond any reasonable doubt. In the present case, although a holder of a cheque has a statutory presumption in its favour, however, in view of the overwhelming evidence which has been brought on file, the aforesaid presumption stands rebutted. Consequently, learned Judicial Magistrate has not committed any error, enabling this Court to interfere.

Learned counsel for the appellant, although, made an attempt to persuade this Court to take a different view, however, in absence of perversity in the view taken or substantive misreading of the evidence resulting in material irregularity, this Court does not find any good ground to grant leave to appeal. The jurisdiction of the Court, while examining application under Section 378 of the Code of Criminal Procedure, is limited and the facts of this case do not warrant any interference.

In view of the above, leave to appeal is declined. Consequently, the application is dismissed.

31.05.2019 **(ANIL KSHETARPAL)**
mks **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No