

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

**CRM-A No.1805-MA of 2015 (O&M)
Date of Decision: July 24, 2019**

M/s Dalip Kumar Bhanwar Lal Commission Agents

.....APPELLANT

VERSUS

Parvinder Singh

.....RESPONDENT

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Jasuja, Advocate
for the applicant-appellant.

SURINDER GUPTA, J.(Oral)

CRM-36337-2015

Heard on the application for condonation of delay. There is delay of 26 days in filing the appeal.

In view of the facts mentioned in the application, which is supported by an affidavit, the same is allowed. Delay of 26 days in filing the appeal is, hereby, condoned.

Main Case

Heard.

The applicant-appellant filed a compliant under Section 138 of Negotiable Instruments Act against the respondent with the plea that he had issued a cheque of ₹4,50,000/- bearing No. 002063 dated 02.02.2013 drawn on State Bank of Bikaner & Jaipur, Branch Abohar in discharge of his legal

liability. Learned trial Court on the basis of evidence observed that cheque in dispute was issued by the accused and there is a presumption that the cheque was issued towards outstanding liability. The evidence produced by the appellant was scrutinised to find as to whether the respondent had been able to rebut the presumption against him by proving his plea that he had given the cheque in question as security. While discussing these facts, learned trial Court took note of certain facts which are enumerated as follows:

- (i) The complainant has failed to mention the date, month or year when the cheque amount was advanced to the respondent;
- (ii) The complainant is running a business of commission agent and used to maintain day book as well as ledger book, from where it could be ascertained that payments were made to the respondent on various occasions but the account book were not produced by complainant to prove advancement of any loan to the respondent;
- (iii) It is not disputed that respondent was customer of the complainant and the factum of advancement of money to him could be proved by proving entries in the account books which were not produced;
- (iv) The defence of the respondent from the very beginning is that he had given the cheque in question to the complainant as security which he had misused;
- (v) It was admitted by complainant that respondent was taken

by him to State Bank of Bikaner and Jaipur for opening his account. He got his account opened in the bank and signed account/opening form as witness identifying the respondent.

(vi) The complainant has stated that respondent has left commission agent shop after settling his account but no date, time, month or year of said settlement was mentioned. Learned trial Court was of the view that after settlement of the account with the complainant and once he had left his commission agent shop, there was no occasion to advance huge amount of ₹4,50,000/- to him.

Taking note of the above facts and circumstances, learned trial Court arrived at conclusion that complainant has failed to prove the liability of the respondent and on the basis of preponderance of evidence, his defence that he had given the cheque as security was upheld.

Learned counsel for the applicant-appellant has argued that learned trial Court while appreciating the evidence has gone wrong while declining the plea of the appellant that the cheque in question was issued towards the legal liability of the respondent. The respondent had not disputed his signature on the cheque. Even if the appellant had taken him for opening the account, the inference could not be drawn that his signed cheque book was retained by the appellant. So far as non-production of the account books of the business of appellant is concerned, the same does not effect the merits of the case as the respondent had at point of time asked the appellant to produce his account books.

On giving careful thought to the submissions of learned counsel for the appellant and the reasons which prevailed before the trial Court while acquitting the accused, I am of the considered opinion that learned trial Court has committed no error while recording the findings that the appellant has failed to prove the legal liability of respondent. The onus was on the appellant to prove his case beyond shadow of doubt. There was no bar for him in producing the account books of his firm, in support of his contention that a sum of ₹4,50,000/- was outstanding against the respondent. It was not the requirement of law that accused should ask the complainant/prosecutor to produce a particular document to prove the charges against him. Non-production of material document goes against the appellant to rebut his contentions about the advancement of loan to the respondent and support his contentions that cheque in question was given as security cheque to the appellant, a commission agent, where respondent was selling his crops.

I find no legal or factual infirmity in the judgment of the trial Court, calling for any interference in this appeal. No reason is made out to allow application seeking leave to appeal under Section 378 (4) Code of Criminal Procedure.

Dismissed.

(SURINDER GUPTA)
JUDGE

July 24, 2019

Jyoti-II

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No