232 **CRM-A-1758-MA of 2014 (O&M)**

Ashish Gupta Vs. Parshant Chaudhary

Present: Mr. Kunal Dawar, Advocate
for the applicant/appellant.

Mr. Shiv Kumar, Advocate
for the respondent.

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<u>CRM No. 35005 of 2014 and CRM-A-1758-MA of 2014 (O&M)</u>

Reply filed. Copy supplied.

Through this application under Section 391 Cr.P.C., read with Section 311 Cr.P.C. to lead additional evidence, the applicant has sought pruduction of his Income Tax Returns for the year 2011-12, 2012-13 and 2013-14 as Annexure A-I (Colly) as well as of his wife namely Ritu for the year 2012-13 and 2013-14 as Annexure A-2 (Colly), agreement dated 27.07.2012 as Annexure A-3 along with receipts to show source and capacity of the petitioner to advance loan of ₹ 8,50,000/- to respondent.

Learned counsel contends that aforesaid documents are very much necessary for effective adjudication of the case inasmuch as the trial Court has erroneously dismissed the complaint of the petitioner under Section 138 of Negotiable Instruments Act, 1881, (in short as 'Act') on the ground that applicant/appellant could not prove his capacity to pay alleged loan to the respondent.

On the other hand, learned counsel for the respondent-accused has vehemently opposed the application on the ground that the agreement to sell, which now applicant/petitioner wants to produce is a non operative document, because it was never produced during trial. The same requires to be proved by leading evidence and therefore, cannot be permitted to be produced in additional evidence. That apart, applicant/petitioner cannot be permitted to fill up lacuna in his case, after acquittal of the respondent.

Having given thoughtful consideration to the rival submissions, this Court finds merit in the application for the reasons to follow:-

In the entire Negotiable Instruments Act, there is no provision, whereby it is required that a complainant has to prove his source of money. However, on the basis of various judicial pronouncements by different High Courts and Hon'ble the Apex Court, same trial Courts have started asking the complainants to prove their source of money and ability to advance loan against the statutory requirement, ignoring the fact that presumption is to be drawn in favour of holder of the cheque.

Therefore, the statutory provision of Section 139 of the Act has been made redundent. In the instant case also, trial Court negated the claim of the applicant on the ground that he could not prove his ability or that he was having sufficient funds to advance loan, in the absence of Income Tax Returns. By recording such findings, while dismissing the complaint, the trial Court took the applicant by surprise inasmuch as, in case, there would have been any statutory requirement for production of Income Tax Returns to prove source of money and/or ability to advance loan, in that eventuality the applicant at the time of leading his evidence in affirmative must have led the same.

However, since, it was not statutory requirement, therefore, the petitioner did not prove the same.

It is well settled principle that none should be made to suffer on technical ground. Income Tax Returns and agreement to sell sought to be produced by the applicant are authenticated documents. Therefore, they are permitted to be taken on record by way of additional evidence.

Accordingly the application is accepted. Annexures A-1 to A-3 (Colly) are taken on record. Consequently impugned judgment of the trial Court dated 27.08.2014 dismissing the complaint of the applicant is set aside. The case is remanded to the trial Court to afford reasonable opportunity to the applicant to lead his evidence apart from the above documents. Obviously, respondent shall have an opportunity to rebut the same. With the acceptance of CRM No. 35005 of 2014. No separate order is required to be passed in CRM-A-1758-MA of 2014 at this stage.

Both the parties are directed to appear before the trial Court on 31.01.2019. The trial Court is directed to decide the complaint of the applicant afresh.

(RAMENDRA JAIN)

January 14, 2019 **JUDGE**

Poonam Sharma