

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

CRM-A-843-MA-2018 (O&M)

Date of decision : 21.11.2019

Dharminder Singh

...Applicant/appellant

Versus

Sukhwinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Gupta, Advocate for the applicant/appellant.

ANIL KSHETARPAL, J. (ORAL)

CRM-16295-2018

For the reasons stated in the application, delay of 05 days in filing the present appeal is condoned.

Application is allowed.

CRM-A-843-MA-2018 (O&M)

Special leave to appeal has been sought against judgment of acquittal passed by the learned Judicial Magistrate Ist Class, Patiala, while dismissing complaint under Section 138 read with Section 420 of the Negotiable Instruments Act, 1881.

Complainant-appellant had alleged that accused has taken a friendly loan of ₹10,00,000/- in the year 2011 through bank transaction. In discharge of his liability, accused had issued a cheque dated 07.10.2014 for a sum of ₹10,00,000/- which on presentation was dishonoured resulting in filing of the complaint.

Learned Judicial Magistrate after examining the record has

recorded following positive findings:-

- 1) Complainant is son of a commission agent and the accused (farmer) is a customer of the aforesaid commission agent firm.
- 2) There is no document when the alleged loan of ₹10,00,000/- was given to the accused. Although it is being claimed by the complainant that they are in a friendly relationship, however, no evidence in support thereof has been produced.
- 3) There are major contradictions in the statement of complainant.
- 4) It is positive case of the appellant that accused had given cheque in question after filling the name of the appellant and date on the cheque. However, Handwriting expert examined has proved that various columns of cheque have been filled up with different pen and ink and the handwriting is also different when compared with the signatures on the cheque in question.

Learned counsel for the applicant/appellant has submitted that the appellant had extended friendly loan through bank transaction, therefore, payment is proved. He further submitted that accused has been taking different defences. He further relied upon the judgment passed by Hon'ble the Supreme Court in case of **Bir Singh Vs. Mukesh Kumar, (2019) 4 SCC 197.**

This Court has heard learned counsel for the applicant/appellant at length and examined the judgment passed alongwith record summoned from the Courts below.

As regards first argument, it is not disputed that account of commission agent firm with respect to accused-respondent has not been

produced. Appellant claims that he has agricultural income. He further claims that initially, he extended loan of ₹10,00,000/- and although aforesaid amount was not paid by the accused-respondent, he still further gave another sum of ₹5,00,000/-. Still further, learned Magistrate has passed an order on appreciation of evidence and has taken a reasonable and plausible view. While hearing the appeal against acquittal, the jurisdiction of the Court is limited. Appellate Court can interfere only if the judgment under appeal suffers from perversity or any substantive error.

Reliance placed by learned counsel for the applicant/appellant on the judgment passed by Hon'ble the Supreme Court in the case of Bir Singh (Supra) is wholly misplaced. In the aforesaid case, Hon'ble the Supreme Court while examining the facts of the case has laid down that if a blank cheque leaf voluntarily signed and handed over by the accused towards some payment is proved, the case would still fall under Section 138 of the Negotiable Instruments Act. There is no doubt on the aforesaid proposition of law. However, the basic requirement is that the complainant must prove that the amount is due and payable and the cheque in question was issued for due and payable liability. In absence of the aforesaid evidence, it would not be appropriate to convict the accused merely on presumption.

Hence, dismissed.

21.11.2019

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No