IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-922-MA of 2018 (O&M)
Date of Decision: 05.11.2019

Sarla Devi ....Applicant

Vs.

Bishamber Singh ....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: - Mr. Abhishek Sharma, Advocate
for the applicant.

*****

HARNARESH SINGH GILL, J.

CRM-16830-2016

This is an application under Section 5 of Limitation Act, 1963 seeking condonation of delay of 86 days in filing the application under Section 378 (4) Cr.P.C. seeking leave to appeal on the ground that the present case was marked to the counsel through Legal Aid Committee. Thus, in that process, unintentional delay of 86 days has occurred.

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed. Delay of 86 days in filing the application under Section 378 (4) Cr.P.C., is condoned.

CRM-A-922-MA of 2018

Applicant Sarla Devi has filed the present application under Section 378(4) Cr.P.C. for grant of leave to appeal against the judgment dated 7.12.2017, passed by Additional Sessions Judge, Ludhiana, vide which the appeal filed by the respondent, challenging the judgment of conviction and order of sentence dated 30.3.2015, passed by Judicial Magistrate Ist Class, Ludhiana whereby he was convicted under Section 138 of the Negotiable Instruments Act, 1881 ('Act' for short) and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 3,000/- and, in default of payment of fine, to further undergo simple imprisonment of one month, was allowed and he was acquitted of the charge framed against him.

A complaint under Section 138 of the Act was filed by the applicant-complainant with the allegations that the respondent-accused had taken a friendly loan of Rs. 3.00 lacs in the month of December 2011 from the applicant with an assurance to repay the same within a short period. Thus, in order to discharge his legal liability, the respondent had issued a cheque bearing No. 160461 dated 26.4.2012 for Rs. 3.00 lacs. When the said cheque was presented for encashment, the same was returned unencashed with remarks "insufficient funds" vide bank memo dated 1.5.2012. Legal notice dated 24.5.2012 was issued by the applicant but the respondent did not make the payment.

After taking into consideration the evidence of applicant Sarla Devi (CW-1), the evidence on record and the evidence of the respondent that on 10.4.2011 he had taken handy loan from Rajan Chopra amounting to Rs. 1.5 lacs on interest @ 10% per month for three months and a blank cheque was given as security to Rajan Chopra. Later, as per the stand of the respondent, the loan amount was returned and instead of returning the blank cheque to the respondent, it was handed over to the applicant.

The trial Court has drawn the conclusion that legal liability for discharge against the cheque (Ex. C1) was of the respondent. Para 19 of the judgment of the trial Court reads as under:-

> "*The defence has thoroughly and miserably failed to prove beyond a reasonable doubt that there was actually no legally*

> *existing debt or liability for the discharge of which said cheque was issued. There is nothing substantial vociferously clamoured through the categorical arguments put forth on the defence side which can demythologize the version of the accused towards the predisposition that there was actually not at all any legally existing debt or liability for the discharge of which the cheque was issued. There is enough evidence convincingly giving the version of a legally existing debt and liability on the part of the accused towards the complaint and issuing of the cheque in discharge of that liability which penultimately led to manifestations of the aid act of the accused under the pontifications of the Section 138 of the Negotiable Instruments Act. Undoubtedly the comprehensiveness of the evidence put forth, the arguments led and totality of facts on the file which predispose nothing but the fact that there was a legally enforceable debt or liability on the part of accused for discharge of which he issued a cheque which later on dishonoured thus bringing the act of the accused under the tutelage of the Section 138 of the Negotiable Instruments Act. The complainant has examined as substantiating witness who has fully supported and proved the case of the complainant.*"

Accordingly, the respondent was convicted under Section 138 of the Act and sentenced to undergo rigorous imprisonment for six months along with fine of Rs. 3,000/-.

The lower Appellate Court, after taking into consideration the arguments of the learned counsel and looking into evidence, allowed the appeal of the respondent-accused.

Paras 16 and 19 of the judgment of Appellate Court read as under:-

> *"16. Hence from the above cross examination of the complainant in this complaint case as well as cross*

examination of the complainant in civil suit which statement has been proved on record in this case clearly establish on record that complainant remained failed to prove that she had such amount of Rs.3 lac to advance the loan to the appellant because except the self suffered statement there is no supporting evidence on record by way of independent witness or documentary evidence for the advancement of alleged loan amount to the appellant. No income tax return has been proved on record to show the annual income of the complainant. No bank account of the complainant has been proved on record to show the loan amount with the complainant even singal proof has not been brought on record to show any amount with the complainant in the bank account or in her house or procured from anyone. This court is of the opinion that if no evidence has been produced on record by the complainant that she had regular income or any business to advance the loan of alleged amount then presumption u/s 139 and 118 Negotiable Instrument Act could not be drawn and conviction is liable to be set aside. To support this opinion this court has relied upon the citation Binod Kumar Lall Vs. State of Jharkhand and another 2009(5) RCR(Criminal) 68.

x x x x x

19. This court has further found that in the complaint complainant alleged that her son and her were having friendly relations with the appellant but during cross examination in this case admitted that she do not know if her son Rajan Chopra known the appellant-accused and her son never talked with the accused in her presence ever. Further she also admitted during cross examination in her statement made in the civil suit that Bishamber Singh has no relation with her nor he is her relative. She further admitted that she never visited the house of Bishamber Singh. On one hand complainant is saying that she remained from 2002 to 2011-2012 at Manali but during cross examination she stated that

> *she was also supplying the business of hosiery for Manali for the last 1-1/2/2 years. It is also admitted by the complainant that appellant is resident of Manali and not Ludhiana and it is also admitted fact of the complainant that she is resident of Ludhiana and no proof has been brought on record by the complainant to show that she at any point of time remained at Manali and the appellant-accused has friendly relation with the complainant and her son. This court is of the opinion that complainant remained failed to prove her friendly relation with the appellant. This court is of the opinion that if it is so then without any relation complainant is not supposed to advance huge amount of loan to a stranger/unknown person. Even in this manner the story of complainant for advancement of loan is not proved."*

I have heard the learned counsel for the applicant and have gone through the case file.

It is argued by the learned counsel for the applicant that the cheque in question was never kept as a security with the son of the applicant as there is no evidence to prove that the respondent had moved to the authorities concerned to make a complaint and it is rather the applicant who had approached the Court. Moreover, the respondent did not dispute his signatures on the cheque in question and since it was a friendly loan, there was no question to get executed any document in this regard.

This Court finds that the applicant did not produce any evidence to show that she had some regular income to advance loan of the alleged amount. There is no proof of lending any loan to the respondent and the respondent had clearly rebutted the presumption available in favour of the applicant. The applicant had also failed to show the advanced loan amount in income tax returns. The applicant had also not brought on record any friendly relationship with the respondent.

Learned counsel appearing for the applicant could not point out any material illegality or perversity in the impugned judgment. Nothing has been shown as to the misreading and misinterpretation of the evidence by the learned trial Court, while passing the impugned judgment.

Consequently, the application seeking leave to appeal is dismissed. Leave to appeal is declined.

(HARNARESH SINGH GILL)
JUDGE

November 05, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes