IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CRM-A-193-MA-2015 (O&M)
Date of decision : 20.05.2019

Gopal Singh ...Applicant/appellant

Versus

Dhan Singh ...Respondent

2. CRM-A-671-MA-2017 (O&M)
Date of decision : 20.05.2019

Gopal Singh ...Applicant/appellant

Versus

Ramesh Chand Tiwari ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Indu Bala, Advocate for
Mr. Aditya Jain, Advocate for the applicant/appellant.

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ANIL KSHETARPAL, J. (ORAL)

By this order, two applications for leave to appeal shall stand disposed of.

In both the cases, judgment of acquittal has been passed by the Court in complaints under Section 138 of the Negotiable Instruments Act. Facts are being taken from CRM-A-193-MA-2015. Learned trial Court has recorded the following findings:-

> *"19. In this case the execution of the cheque in question is not denied. Likewise, handing over of the cheque to the complainant is not denied by the accused. The sole question around which this case revolves is whether the cheque in*

question can be said to have been issued in discharge of the liability in favour of the complainant. The existence of liability of the accused is alleged on the basis of document Ex.C5. Again this document is an admitted document. The execution of agreement Ex. C5 as well as the cheque in question in favour of the complainant is challenged on the ground that same was done under pressure from the police officials. Before deciding this aspect let us first take into account whether the legally enforceable liability of the accused existed at the time of issuance of cheque in question. Answer to this question can be found in the evidence on record.

20. The complainant in his complaint has alleged to have lent a sum of Rs.92 lacs to the present accused along with one Ramesh Tiwari, Sikander and Shri Ram. There is no disclosure of the date on which this amount was lent to the accused along with other person. At one point of time the complainant has submitted that this amount of Rs.92 lacs was given to the accused along with other persons and at that time a total of 10 persons were present. Further, this amount was received by him by selling some land. On another occasion complainant gave a rather contradictory statement when he submitted that in the year 2008 he lent a sum of Rs.47 lacs to the accused. He further submitted that the sum of Rs.92 lacs was made after adding interest on the principle amount of Rs.47 lacs. The complainant further admitted the suggestion that he never lent a sum of Rs.92 lacs. The amount of Rs.47 lacs was given by him to the accused along with other persons in the year 2008. It, therefore, comes out that the complainant has wrongly disclosed the quantum of money allegedly lent to the accused along with other persons. Thus, the liability as alleged in the complaint is contradicted by the testimony of the *complainant himself.*

21. An argument was raised that the liability of the accused is reflected from the document Ex.C5 which is an admitted document. The genuineness of this document was challenged by the accused alleging that the police has coerced him to issue the cheque in favour of the complainant. In this regard one can refer to the testimony of CW1, the complainant himself, wherein he suffered the following statement :-

> *"The police has provided me the cheque on the basis of complaint lodged with the Economic Cell."*

The role of police has been disclosed by the complainant in this case, which makes the defence of the accused probable to the extent that the cheque was issued by him under the pressure of police.

22. From the above made discussion, it comes out that the complainant has wrongly mentioned the amount lent to the accused. He has also denied the execution of any sale agreement on behalf of the accused person in consideration of the amount received from the complainant. The denial of any sale agreement by the complainant goes to contradict his own version during cross-examination that the accused along with other persons got executed an agreement in favour of his Smt. Somwati. The complainant himself had further clarified that this agreement was entered between his wife and one Smt. Noor Jahan. Since the complainant has admitted this fact that accused had got executed an agreement in the year 2008 in favour of his wife Somwati, we must now refer to the document Ex.D1, which is a registered agreement executed by the above mentioned Smt. Noor Jahan in favour of the wife of the complainant. So far it comes out that the accused got executed an agreement in *favour of the complainant's wife in the year 2008 itself.*

23. The complainant has alleged that he lent a sum of Rs.47 lacs to accused and other persons in the year 2008. As per his own version, the accused had not sold him any land and therefore he asked the accused to return his money for which cheque in question was issued. The question which should now be adjudicated is whether the money as alleged by the complainant is legally recoverable or not? It is essential that to constitute the offence U/s: 138 of N.I. Act the liability should not only be existing but legally enforceable also. The complainant having disbursed the amount in the year 2008 could have sought its refund within three years from the date of lending of money or in case the accused had acknowledged their liability prior to the lapse of limitation, for another three years thereafter. In this case the complainant has not disclosed the date on which this money was lent to the accused. Further, the accused has not acknowledged the liability before the lapse of three years from the date of disbursement of loan, which is evident from the fact that the agreement Ex.C5 is dt. 13.3.2013 which is almost two years past the expiry of limitation for recovery of the amount. In this manner we can say that the liability of the accused person is not legally enforceable when cheque was issued to the complainant. The legal enforceability is to be seen in a manner that had it been a dispute of civil nature, the Civil Court would have dealt with the matter. Once the matter becomes time barred, the Civil Court cannot adjudicate the same and any rights, whatsoever, once rendered time barred, cannot be enforced by the Civil Court also.

24. Summing up, it comes out that the complainant not only misrepresented a quantum of money lent to the accused but also sought the liability enforced to the accused in *respect of a time barred debt/liability. Besides this, he procured the cheque in question through the police officials, which creates a suspicion against the complainant."*

Learned counsel although made attempt, however, could not draw attention of the Court to any perversity or substantive error either in appreciation of evidence or of law. The scope of interference in leave to appeal against the acquittal is limited.

On careful reading of the judgment under appeal, it is apparent that the trial Court examined the evidence in detail and after appreciation thereof decided the case. Still further, onus was on the complainant to prove its case beyond any reasonable doubt.

In view thereof, there is no ground to grant leave to appeal.

Both the applications are dismissed. Consequently, main appeals are also dismissed.

In view of dismissal of the main appeal, no further order is required to be passed in application for condonation of delay of 117 days in filing the appeal bearing CRM No.11522 of 2017 in CRM-A-671-MA-2017.

20.05.2019 **(ANIL KSHETARPAL)**
Pawan **JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No