IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-2583-MA of 2017

DATE OF DECISION: JULY 15, 2019

THE PANIPAT DISTRICT PRIMARY CO-OP. ...APPLICANT
AGRI. & RURAL DEVELOPMENT BANK LTD.

VERSUS

SATPAL ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. ARUN SINGAL, ADVOCATE FOR THE APPLICANT.

MANOJ BAJAJ, J.(ORAL)

Leave to appeal has been sought for by the applicant against the judgement dated 3.10.2017, passed by the Judicial Magistrate Ist Class, Panipat whereby the respondent has been acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881.

The complainant brought a complaint under Section 138 of the Negotiable Instruments Act, 1881 on the ground that the accused-respondent took a loan of ₹1 lakh from the applicant for the purposes of repair of house and had agreed to repay in installments. The loan was advanced on 26.8.2011 and 7.9.2011. In order to repay the installments, the accused issued a cheque bearing No.118721 dated 2.2.2013 for a sum of ₹28,600/- drawn on The Panipat Central Co-op. Bank, Branch Bapoli which, on presentation, was returned by the banker with the remarks "Funds Insufficient" through its memo dated 7.2.2013. The statutory notice dated 15.2.2013 was also served upon the respondent, however, the same was not adhered to as no payment was made by accused thereby compelling the complainant to institute the complaint.

After recording the preliminary evidence, the trial Court passed the summoning order dated 2.2.2015 and after appearance of the respondent, he explained that the loan was obtained by the accused and the cheque was given as a security which was misused by the complainant-Bank. After examining the evidence on record, the trial Court proceeded to acquit the accused. Aggrieved against the said judgement, the present application for leave to appeal has been filed by the complainant-Bank.

After hearing learned counsel for the applicant, this Court finds that the reasoning given by the Court is based on vital admissions suffered by the complainants-witness. No doubt the cheque was issued by the accused, but the presumption carried under the statute was rebutted by complainant's own admissions, as noticed by the trial Court specifically. The relevant observations of the trial Court are extracted below:-

> "*16. CW1 Ajit Kumar in his cross-examination has stated that the loan in question was not advanced in his presence. The witness has further stated that he does not know the amount of the installment. He has himself deposed that the bank had taken the cheque in question from the accused at the time of the sanction of the loan. He has further admitted that the amount in cheque Ex.C1 has been filled up as per the installments.*
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> *17. It is the requirement that the complainant is required to make specific assertion as to the knowledge of the Branch*

Manager of the transactions explicitly in the complaint and the Branch Manager who has no knowledge regarding the transactions cannot be examined as a witness. In the present case, CW1 has not witnessed the transactions of the loan. Meaning thereby that CW1 Ajit Kumar has not personal knowledge regarding the loan transactions. Furthermore, there is no assertion in the affidavit Ex.CW1/A to the effect that Branch Manager has knowledge regarding the loan transactions. Examined thus, CW1 Ajit Kumar on behalf of complainant bank cannot be examined as a witness. As such his evidence cannot be read against the accused."

A perusal of the above reveals that the view adopted by the trial Court is a possible view based on correct appreciation of evidence which does not warrant any interference.

Resultantly, leave to appeal is declined.

July 15, 2019 **(MANOJ BAJAJ)**
Gulati **JUDGE**

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No