IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-2624-MA-2017 (O & M)
Date of Decision: 29.11.2019

Sumit Kumar

... Applicant

Versus

Netar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Ms. Kanchan Jaswal, Advocate, for
Mr. Gurinderjit Singh, Advocate,
for the applicant.

HARNARESH SINGH GILL, J.

CRM-40028-2017

This is an application under Section 5 of the Limitation Act for condonation of delay of 13 days in filing the application seeking special leave to appeal.

It is argued that delay of 13 days in filing the application seeking special leave to file an appeal, was not intentional as the applicant upon contacting his counsel came to know that limitation in filing the application under Section 378(4) Cr.P.C., was 60 days and thus, the delay of 13 days in filing the same had occurred. The application is duly supported by an affidavit.

There is sufficient cause to condone the delay of 13 days in filing the application seeking special leave to appeal. Therefore, the present application is allowed and the delay of 13 days in filing the application seeking special leave to appeal is condoned.

CRM-A-2624-MA-2017

The application in hand is under Section 378 (4) of the Code of Criminal Procedure for grant of special leave to appeal against the judgment dated 07.09.2017 passed by the learned Judicial Magistrate Ist Class, Rajpura, vide which complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'), has been dismissed and the respondent-accused has been acquitted of the notice of accusation served upon him.

As per the allegations in the present case, respondent-Netar Singh had borrowed an amount of Rs.5,50,000/- from the applicant-complainant and in order to discharge his legal liability, he had issued cheque No.043251 dated 29.04.2016 amounting to Rs.5,50,000/-, drawn on ICICI Bank Limited, but vide memo dated 30.04.2016, the said cheque when presented for encashment got dishonoured on account of 'Funds Insufficient'. Thereafter, the applicant through his counsel issued a legal notice to the respondent calling upon him to make the payment, but to no avail. Thus, the complaint was filed. In support of his version, the complainant appeared as CW 1 and also produced the evidence on record.

The stand of the respondent-accused before the learned trial Court was that he had been falsely implicated in the present case. It was further stated that in fact, Paramjit Kaur, mother of the respondent, had agreed to sell her house situated in *lal lakir* of village Shamdu, Tehsil Rajpura, to the applicant-complainant on 07.09.2015 and at the time of execution of the agreement to sell dated 07.09.2015, the applicant-complainant had asked the respondent to put his signatures on the agreement to sell as a witness and also to issue three blank cheques as a security so as to bound his mother to execute the sale deed. But the applicant-complainant with malafide intention had misused the blank cheque given by the respondent by filling up the amount of Rs.5,50,000/- and presented the same for encashment. In fact, the respondent had never borrowed any amount, as alleged in the complaint.

The trial Court had carved out the following points for determination:

“I) Whether accused issued the cheque Ex.C1 in favour of complainant in order to discharge his legally enforceable liability?

II) Whether accused has been able to rebut the presumption under Section 139 of the Negotiable Instruments Act?”

While drawing the conclusion that the applicant-complainant is not an income-tax payee and he is not having such income to lend Rs.5,50,000/- nor any entries in his account record, the trial Court dismissed the complaint.

Aggrieved of the aforesaid judgment, the present application seeking special leave to appeal has been filed.

I have heard learned counsel for the applicant at length and with her able assistance, have also gone through the judgment of the court below.

Learned counsel for the applicant has argued that the applicant had stepped into the witness-box as CW-1 and also placed on record the original cheque as Ex.C1 alongwith other documents and the cheque was issued by the respondent-accused in discharge of his legally enforceable debt/liability. It is also argued that the presumption under Section 138 of the Act is in favour of the applicant and moreover, the respondent had admitted in his statement under Section 313 Cr.P.C. that the cheque in question was given by him.

It is the case in which the respondent had discharged the initial onus to prove that existence of consideration was improbable. Thus, onus shifted upon the applicant-complainant. In his statement recorded under Section 313 Cr.P.C, the respondent stated that the cheque had been given as a security so that agreement to sell between his mother and the applicant could be executed in time. It has also come on record that the applicant is running a Milk Dairy and is not an income-tax payee.

Thus, it has been rightly considered by the learned trial Court that the income of the applicant is less than the amount of Rs.5,50,000/-, therefore, such a huge amount could not be believed to have been given as a friendly loan.

Moreover, the applicant admitted during his cross-examination that there had been some transactions between him and the mother of respondent and the amount had been given to the respondent in his(applicant) shop itself and that at that time, nobody had been present there. Even no signed document, by way of receipt, had been placed on record to show the authenticity of the loan amount. This creates a doubt as there is no corresponding entries in the account record and presumption in favour of the drawer is to stand for very effective rebuttal.

Since the applicant has miserably failed to prove any legal liability against the cheque issued by the respondent, I do not find any ground to grant special leave to appeal.

In view of the above, finding no merit in the present application seeking special leave to file appeal, the same is dismissed. Special Leave to appeal is declined.

29.11.2019 **(HARNARESH SINGH GILL)**
parveen kumar **JUDGE**

Note: Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No