

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-267-MA of 2014

DATE OF DECISION: NOVEMBER 29, 2019

NATHU RAM JAKHAR

...APPLICANT

VERSUS

ATTAR SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. SUBHASH GODARA, ADVOCATE FOR THE APPLICANT.
MR. RISHAV JAIN, ADVOCATE FOR THE RESPONDENT.

MANOJ BAJAJ, J.(ORAL)

Leave to appeal has been sought for by the applicant against the judgement dated 23.12.2013, passed by the Judicial Magistrate Ist Class, Hisar vide which the respondent has been acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

The complainant had brought the complaint under Section 138 of the Negotiable Instruments Act, 1881 on the ground that he and the respondent were having good relations with each other. On 3.1.2001, the respondent requested him to advance Rs.2,05,000/- and assured him to return the same by the end of October, 2002. The complainant acceded to his request and gave him Rs.2,05,000/-. In the month of October, 2002, when the complainant demanded back his money from the respondent, he issued a cheque bearing No.025700 for a sum of Rs.2,05,000/- drawn on Central Bank of India, Shahbad Mohammedpur Village, Delhi. On presentation, the same got dishonoured with the remarks "Insufficient Funds". Legal notice was served upon the respondent to which no response

was received, compelling the complainant to institute the complaint. After recording the preliminary evidence, the trial Court passed the summoning order dated 10.4.2003 and after his appearance, respondent pleaded not guilty and claimed trial. After examining the evidence on record, the trial Court proceeded to acquit the accused and aggrieved against the said judgement, the present application for leave to appeal has been filed.

Learned counsel for the parties have been heard.

Mr. Godara has vehemently argued that the signatures on the cheque are not disputed particularly, when the stand adopted by the accused is that the cheque was given as a security. He submits that the necessary ingredients regarding commission of offence were duly proved and therefore, the impugned judgement warrants interference.

On the other hand, learned counsel appearing on behalf of the accused has argued that the trial Court has passed a well reasoned judgement considering the entire material evidence available on record. He submits that the trial Court has noticed discrepancies in the prosecution case and rightly proceeded to acquit the accused. According to him, leave to appeal deserves to be dismissed.

After hearing learned counsel for the applicant, this Court finds that the trial Court has carefully examined and appreciated the evidence on record and acquitted the accused of the charges. It has been specifically noticed that there is material variation in respect of the date when the cheque in question was issued. As per the complaint, the cheque was issued on 2.11.2002, whereas as per the testimony, the said cheque was taken by the

accused on 3.1.2001, i.e. the date when the alleged loan amount of Rs.2,05,000/- was advanced by him to the accused. Apart from it, it is also noticed that the explanation offered by the accused under Section 313 Cr.P.C. is regarding misuse of the cheque. According to him, the loan was taken by one Rajesh Yadav and the accused had given the said cheque as security to the complainant. It is the case set up by the complainant himself that in the last week of October, 2002 he demanded the due amount from the accused and the complainant issued the cheque in question in his favour on 2.11.2002. Considering the evidence on record and the stand of the parties, the prosecution case itself raises serious doubts and therefore, the trial Court has rightly extended the benefit of doubt to the accused.

Resultantly, leave to appeal is declined.

November 29, 2019
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No