

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-278-MA of 2017 (O&M)

DATE OF DECISION: JULY 11, 2019

KRISHAN PAL

...APPLICANT

VERSUS

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. BIKRAM CHAUDHRY, ADVOCATE FOR THE APPLICANT.
MR. NISCHAL MANN, DAG, HARYANA.

MANOJ BAJAJ, J.(ORAL)

Leave to appeal has been sought for by the applicant against the judgement dated 19.3.2015, passed by the Judicial Magistrate Ist Class, Faridabad vide which respondent No.2 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, 1981 on the ground that a friendly loan of ₹4 lakhs was advanced in August, 2012 to the accused, namely, Hitesh Kapoor which was to be returned by him within a period of 6 months. Upon request made by the complainant, a cheque No.104843 drawn on Dhanlaxmi Bank Ltd. was issued by respondent No.2. Upon presentation, the said cheque was returned by the banker dishonoured with the remarks "Funds Insufficient" vide memo dated 4.9.2013. The statutory notice dated 18.9.2013 was served upon respondent No.2. However, the same failed to

evoke any response, as no payment was made thereby compelling the complainant to institute the complaint. After recording the preliminary evidence, the trial Court passed the summoning order dated 8.10.2013. During trial, respondent No.2 explained that the cheque was given as a security which was misused by the complainant. 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.

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 complainant. No doubt the signatures were admitted by the accused, but the presumption carried out under the statute was rebutted by his own admissions which were noticed by the trial Court specifically. As it was a friendly loan, according to the complainant, however, in his cross-examination, he was unable to give the particulars of the accused, shop of the accused. He was unable to even give the description of his (accused) family or his father's name. The trial Court rightly observed that it was not a case of friendly loan. The source of advancement of loan was found to be without any material. The case of the complainant that he had obtained a Gold loan on 18.7.2012 to further advance to the accused was without any material or evidence. The trial Court has minutely examined the material on record and formed a possible view which does not warrant any interference. Since, this case has been decided on merits, therefore, this Court does not find any valid reason to condone the delay of 628 days in filing the present

appeal.

Resultantly, leave to appeal is declined.

July 11, 2019
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No