

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-302-MA-2015 (O&M)

Date of decision : 03.05.2019

Rajesh

...Applicant/appellant

Versus

Subhash Chand Halwai

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Malik, Advocate for the applicant/appellant.

Mr. Namit Sharma, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

CRM No.5648 of 2015

For the reasons stated in the application, which is duly supported by an affidavit, delay of 77 days in filing the application for leave to appeal is condoned.

Application is allowed.

CRM-A-302-MA-2015

Although, there is force in the submission of the learned counsel for the applicant/appellant that the findings of the learned trial Court in para 13 of the judgment are erroneous as by now it is well settled that a cheque can be repeatedly presented within the validity time and merely because after first presentation, a demand notice was issued, the limitation for filing the complaint has to be calculated from the last presentation and consequent notice issued thereafter in view of the judgment passed by Hon'ble the Supreme Court in the case of **MSR Leathers Vs. S. Palaniappan and another, (2013) 1 SCC 177.**

However, there are other cogent reasons recorded by the First Appellate Court which read as under:-

“12. In this regard, it is pertinent here to mention that the complainant vide the present complaint has claimed that the abovenamed accused had purchased paint items from him worth Rs.74,000/- vide bill no.330 dated 18.5.2007 and in discharge of his said liability, he had issued the cheque in question to the complainant. However, the abovenamed accused in the present case has taken the defence that he did not know how to operate a bank account and therefore, the complainant accompanied him to his Bank for getting his account opened and the cheque book pertaining to his account was also in possession of the complainant and the complainant has misused the said cheque book of the accused and has fraudulently filed the present complaint. Here it is pertinent to mention that the defence taken by the accused in the present case has been categorically admitted by the complainant while himself stepping into the witness box as CW1. In this regard it is pertinent here to mention that the complainant has categorically admitted in his cross examination that he had accompanied the abovenamed accused to the Canara Bank for the purpose of getting his account opened and it has been further categorically admitted by the complainant that he had also stood as guarantor of the abovenamed accused. Here it is also pertinent to mention that complainant has further admitted in his cross examination that when the cheque book was issued to the accused, he was present with him. Here it is also pertinent to mention that that complainant has further admitted in his cross examination that when the cheque book was issued to the accused, he was present with him. Here it is also pertinent to mention that the complainant in the present case has placed his claim on the bill no.330 dated 18.5.2007,

but he has not produced on record the said bill or even the photocopy of the same and in this regard, it is also pertinent to mention here that the complainant in his cross examination has categorically admitted that he has the original bill in his possession and he can produce the same on the case file. However, for the reasons best known to the complainant, he has failed to prove the same on record and this also compels the court to draw adverse inference against the present complainant. Hence, in these circumstances, I am of the considered view that accused has succeeded in raising a probable defence in his favour and hence, in these circumstances, it cannot be said that cheque in question was issued by accused in favour of complainant in discharge of any existing debt or liability.”

Although, learned counsel for the applicant/appellant has made sincere attempt while submitting that once signatures on the cheque in question are not disputed, there is statutory presumption in favour of the holder of the cheque and, therefore, learned trial Court has erred, however, keeping in view the findings to the effect that it is the complainant-appellant who had accompanied accused for opening of the account, as also stood as guarantor, as also he was present when cheque book in question was issued, correctness whereof is not challenged, the findings arrived at, does not require interference.

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

Dismissed.

03.05.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No