IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-681-MA of 2015
Date of Decision: January 16, 2019

Panipat Hire Purchase & Leasing Pvt. Ltd.

......Applicant

versus

Shashi Bhushan

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

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Present:- Mr. Shiv Kumar, Advocate
for the applicant

Sudhir Mittal, J. (Oral)

A complaint dated 02.05.2013 was filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') on account of dishonor of Cheque No. 424055 dated 07.03.2013 for a sum of Rs. 67,380/- drawn on Andhra Bank, Kalka. The complaint has been dismissed by the trial Court by accepting the defence of the accused-respondent. Thus, the present appeal against acquittal.

The facts of the case are that the appellant is involved in the business of financing. It was approached on 30.01.2012 by the accused-respondent for a loan of Rs. 80,000/- The said loan was extended and Rs. 50,000/- was paid by a cheque and Rs. 30,000/- was paid in cash. The amount was repayable alongwith interest @ 3% per month. In discharge of his liability, the accused-respondent issued Cheque No. 424055 dated 07.03.2013 for a sum of Rs. 67,380/- but the said cheque was dishonored vide Memo No. 08.03.2013 on account of insufficient funds. Thereafter, notice under Section 138 of the Act was issued but payment was not made within the stipulated time leading to the filing of the present complaint.

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The complainant relied upon pro-note Ex. C-2 and memorandum of terms and conditions Ex. C-3 in support of his case that a sum of Rs. 50,000/- was advanced by cheque and Rs. 30,000/- was advanced in cash. He, however, failed to examine the witness of the said documents and, thus, the trial Court held that they had not been proved in accordance with law. The defence of the accused-respondent was that he had only taken a loan of Rs. 50,000/- and that a blank cheque had been taken as security which was misused by the complainant. Against the loan of Rs. 50,000/- payments had been made vide seven installments of Rs. 4280/- each totalling to Rs. 29,960/- and, thus, it was apparent that a blank cheque issued by the accused-respondent by way of security had been misused.

Learned trial Court has accepted this contention of the accused-respondent on the ground that receipt of Rs. 29,960/- has been admitted by the complainant. The pronote Ex. C-2 and the memorandum of terms and conditions Ex. C-3, not having been proved in accordance with law, it could not be said that an amount of Rs. 80,000/- had been advanced as loan. It has also been found that in the cheque Ex. C-4, the signature of the payee is in a different ink whereas the name of the payee and the cheque has been entered in a different ink. Thus, it has been held that legal presumption in favour of the holder in due course of the cheque had been displaced by the accused-respondent.

Learned counsel for the appellant has not been able to successfully displace the findings.

The appeal is without any merit is, accordingly, dismissed.

January 16, 2019 **[SUDHIR MITTAL]**
reena **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No

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