IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-779-MA-2015 (O/M)
Date of decision : 25.1.2019

Mahesh Chaudhary .... Petitioner (s)

Versus

Om Parkash .... Respondent (s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Randhir S. Hooda, Advocate,
for applicant.

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KULDIP SINGH, J. (ORAL)

In terms of order dated 23.1.2019, passed by this Court, learned counsel for applicant has produced original copy of receipt No. 1329, dated 25.1.2019, showing that an amount of Rs. 5,000/-, stands deposited in High Court Lawyers Welfare Fund of this Court and same is taken on record.

By this order, I will dispose of application filed under Section 378 (4) Cr.P.C. for leave to appeal against acquittal.

I have heard learned counsel for applicant and have also carefully gone through file.

As per case of complainant, on 18.1.2012, accused mortgaged Innova car bearing registratin No. DL-7CG-2924 with complainant for Rs. 7,00,000/-. Loan of Rs. 7,00,000/- was advance. At the same time, cheque No. 591422, dated 25.10.2012, drawn on Punjab National Bank, Sector-15, Faridabad, was given to complainant which was probably a post dated cheque. The said cheque when presented to bank was dishonoured with remarks 'funds insufficient'. On the basis of other allegations, complaint was filed.

Trial Court, after summoning accused, recorded evidence of complainant. It also recording statement of accused under Section 313 Cr.P.C., thereafter heard both parties, examined evidence and dismissed complaint.

Perusal of file would show that a separate agreement was executed between parties on the same day wherein it was stipulated that amount of Rs. 7,00,000/- is to be paid in 30 installments, starting from 18.1.2012. It was further stipulated that if till said date, entire amount is not returned, complainant will have right to present cheque No. 591422, dated 25.10.2012, given as security, before bank. If cheque bounces, complainant will have right to sell the vehicle to recover amount. In this way, said thirty months were to lapse on 18.7.2014. However, complainant presented cheque in question before bank on 25.10.2012 i.e. before he was entitled to present cheque as per agreement between parties. Thereafter, complainant issued legal notice dated 6.11.2012. Therefore, at the time of presentation of cheque before bank, there was no legally enforcement debt or liability, in view of mortgage agreement executed between parties, in which cheque was to be presented before bank after thirty months. Further, trial Court has observed that complainant had admitted that he had received certain amounts, which he has not mentioned in his complainant and that how much payment he has received and what is balance. He also concealed in his complaint that he presented cheque in question for balance amount. Infact, he presented cheque in question for entire Rs. 7,00,000/-, which was not legally enforceable debt or liability. Therefore, trial Court has taken correct view of matter that offence under Section 138 of Negotiable

Instruments Act, 1881, is not made out. There is no ground to grant leave to appeal against acquittal of respondent. As such, application for leave to appeal against acquittal of respondent is dismissed.

(KULDIP SINGH)
JUDGE

25.1.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No