IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-890-MA-2015
Date of Decision: 19.11.2019

Smt.Neelam Saini

... Applicant

Versus

Manoj Kumar Rai

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Charanji Lal, Advocate,
for the applicant.

Mr. Sachin Mittal, Advocate,
for the respondent.

<u>HARNARESH SINGH GILL, J.</u>

Applicant has filed the present application under Section 378(4) Cr.P.C. seeking leave to file appeal against the judgment dated 21.01.2015 passed by the learned Judicial Magistrate Ist Class, Gurgaon, vide which the respondent-accused has been acquitted of the notice of accusation served upon him in a complaint filed under Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 (for brevity, 'N.I.Act').

As per the stand of the applicant, the respondent, being a neighbour, borrowed Rs.1,50,000/- from the applicant as a friendly loan. When the applicant asked the respondent to discharge his liability, he issued a cheque bearing No.404309 dated 27.08.2013, amounting to Rs.1,50,000/- in favour of the applicant. However on presentation for encashment, the same was returned with the remarks 'Insufficient Funds' vide memo dated 31.01.2013. Thereafter, a legal notice was sent to the respondent, but he failed to discharge the liability.

The trial Court had carved out the following points, which were required for the complainant to establish on the record:

> "i. That the cheque in question bears the signatures of the accused;
>
> ii that the cheque in question was issued for a valid consideration so as to discharge a legally enforceable debt in favour of the complainant; and
>
> iii that all the technical requirements under Section 138 of the Negotiable Instruments Act are fulfilled."

The factum of signatures on the cheque Ex.CW 1/A was not denied by the respondent. Thus, the issue was whether or not the loan was taken by the respondent from the applicant.

The trial Court after taking into consideration the evidence on record and the rival contentions of the parties, vide judgment dated 21.01.2015, acquitted the respondent-accused of the notice of accusation served upon him.

Aggrieved of the aforesaid judgment, the present application seeking leave to appeal has been filed.

I have heard learned counsel for the parties and with their able assistance, have gone through the judgment of the court below.

Learned counsel for the applicant has argued that condition of proviso of Section 138 (a) of the N.I Act, stood fulfilled as notice Ex.C3 had been placed on record, alongwith receipt as Ex.C4. It has further been argued that for financial capacity, the applicant had produced the receipt of gold ornaments and loan of Rs.1,57,000/- taken against it and the presumption is attached under Section 146 of the N.I.Act regarding dishonour of cheque in question due to insufficient funds of which the burden of proof was upon the respondent, who had admitted his signatures.

Per contra, learned counsel for the respondent has argued that the complaint as well as affidavit Ex.CW 1/A did not mention the date of advancement of loan to the respondent. It has been also argued that for taking loan from Mannapurnam Finance by pledging ornaments, the applicant had not specified the particular items of gold and on 10.5 gm of gold, a loan of Rs.1,50,000/- could not be extended. Thus, the applicant had failed to show her financial capacity to advance such a heavy amount for loan.

It is further argued that it was during the cross-examination of the complainant when the date of advancement of loan was mentioned for the first time as 20.07.2013, whereas as per Vinod Kumar (CW 4), the loan was advanced on 20.06.2012 i.e. the date of cheque and there is no date of advancement of loan either in the complaint or in the affidavit Ex.CW 1/A.

The trial Court has drawn the conclusion regarding the date of advancement of loan and regarding the financial capacity of the applicant in para no.15 of its judgment which reads as under:

> *"15. I have considered the rival contentions of the Ld. counsel for both the parties. In the complaint, it is alleged that accused and complainant were having*

friendly relations for a long time and the alleged loan was a friendly loan which was advanced by the complainant to the accused. Here, it is pertinent to refer to the cross-examination of the complainant Complainant has stated during her cross-examination that she has given the loan on 20.07.2013 and the gold ornaments were pledged at Mannapuram Finance Ltd. a year before the advancement of the loan. In her complaint, she has stated that the cheque in question was given by the accused on 27.08.2013 when complainant approached him and pressurized her for making payment. However,all these statements of the complainant are contradicted by her own witness CW4-Vinod Kumar. CW 4-Vinod Kumar in his affidavit as well as in his cross-examination has stated that the alleged loan was advanced on 20.06.2012 and the cheque in question was given on that date itself as a guarantee for repayment of the loan amount. CW 4 has further stated in his cross-examination that the loan was given at the house of the complainant whereas complainant has stated that the loan was given at the house of the accused. These contradictory statements made by the complainant and CW4 raise doubt about the genuineness of the claim of the complainant.

Further regarding the financial capacity of the complainant, she has submitted that she had pledged her gold ornaments one year before the advancement of the loan. It appears unreasonable that a person would pledge her gold ornaments and would keep the money for one year for the purpose of giving it to somebody else as a loan. Moreover, the receipt of Mannpuram Finance Ltd. as placed on record are only photo copies. Original has not been shown or produced in Court. Even the dates on the

> *receipts are different i.e one bearing 12.09.2013 and other side is of 12.06.2012. No explanation has come forward from the side of the complainant as to which one of the receipt she is referring to. Even otherwise, the said receipts cannot be admitted into evidence for mode of proof. No other evidence pertaining to the alleged loan transaction has been placed on record."*

Since the applicant has failed to establish the date of advancement of loan to the respondent and has also failed to place on record any document regarding advancement of loan nor did she was able to establish her financial capacity to advance the loan amount of Rs.1.5 lakh, no ground is made out to grant leave to appeal.

To my mind, the standard of proof so far as the prosecution is concerned, is proof of guilt beyond the shadow of reasonable doubt whereas the one on the respondent is only mere preponderance of probability.

From the above, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the present application seeking leave to file appeal, the same is dismissed. Leave to appeal is declined.

19.11.2019 **(HARNARESH SINGH GILL)**
parveen kumar **JUDGE**

Note: Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No